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In the Supreme Court of the United States

OCTOBER TERM, 1936

No. 419

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

JONES & LAUGHLIN STEEL CORPORATION

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR NATIONAL LABOR RELATIONS BOARD

OPINION BELOW

The opinion of the United States Circuit Court of Appeals for the Fifth Circuit (R. 975–977) is reported in 83 F. (2d) 998. The findings of fact, conclusions of law, and order of the National Labor Relations Board (R. 23–45) are reported in 1 N. L. R. B. 503 (1936).

JURISDICTION

The judgment of the United States Circuit Court of Appeals for the Fifth Circuit was entered on June 15, 1936 (R. 977). A petition for rehearing

was denied on July 15, 1936 (R. 980). Petition for a writ of certiorari was filed on September 30, 1936, and was granted on November 9, 1936. The jurisdiction of this Court rests on Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and Section 10 (e) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether the National Labor Relations Act, as applied to this respondent, is a valid exercise by Congress of its power to regulate commerce among the States.

2. Whether the provisions of Section 8, subdivisions (1) and (3) of the National Labor Relations Act, as applied to this respondent, are consistent with the Fifth Amendment.

3. Whether the provisions of the National Labor Relations Act, as here applied, deprive respondent of the right of trial by jury guaranteed in the Seventh Amendment.

4. Whether the provisions of the National Labor Relations Act, as here applied, deprive respondent of the right of free speech guaranteed by the First Amendment.

5. Whether respondent may question the validity of provisions or applications of the Act other than those here invoked against it, and if so, whether the validity of such other provisions and applications is in issue here because of their separability.

STATUTE INVOLVED

The National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449; U. S. C., Sup. I, Title 29, Sec. 151 *et seq.*) is printed as an Appendix to the brief for the National Labor Relations Board in *The Associated Press* v. *National Labor Relations Board,* No. 365, October Term, 1936, and is also summarized at pp. 3–8 of that brief.

STATEMENT

On January 23, 1936, a written charge against the Jones & Laughlin Steel Corporation, the respondent, was filed with the Regional Director for the Sixth Region of the National Labor Relations Board, pursuant to Section 10 (b) of the Act and Article II, Section 2 of the Board's Rules and Regulations (R. 6–11). The charge alleged that the respondent had engaged in and was continuing to engage in certain unfair labor practices affecting commerce within the meaning of Section 8, subdivisions (1) and (3) and Section 2, subdivisions (6) and (7) of the Act (R. 6–7). The charge was filed by the Beaver Valley Lodge No. 200, Amalgamated Association of Iron, Steel, and Tin Workers of North America, a labor organization (R. 31, 142–143, Bd. Exh. 48).

Thereupon, pursuant to Section 10 (b) of the Act and Article II, Section 5 of the Regulations, the Board, through its Regional Director for the Sixth Region, issued a complaint and notice of hearing, which were served on respondent (R.

12–16). The complaint alleged that respondent had engaged in and was engaging in unfair labor practices set forth in subsections (1) and (3) of Section 8, in that respondent was interfering with, coercing and restraining its employees in their self-organization and free choice of representatives for purposes of collective bargaining or other mutual aid or protection, and had discharged or demoted employees because they had joined the above-named labor organization in order to discourage membership therein. The complaint alleged further that these were unfair labor practices affecting commerce within the meaning of Section 2, subdivisions (6) and (7) of the Act.

On February 26, 1936, respondent filed a special appearance and answer, admitting the discharges and demotions, but averring that they were made because of inefficiency and violation of respondent's rules. Respondent also asserted that the Act was unconstitutional upon several grounds and that its activities were intrastate and not subject to regulation by Congress or the Board (R. 982–987).

The hearings on the complaint were held before the Board on March 2 and 3, and April 2, 3, 6, 7, and 8, 1936. Following the introduction of evidence on the nature of respondent's business, respondent moved to dismiss the proceeding for lack of jurisdiction (R. 129). The motion was denied (R. 129), whereupon respondent withdrew from further participation in the hearings (R. 130).

On April 9, 1936, the Board handed down its decision setting forth its findings of fact (R. 23–43) and entered the order here involved (R. 44–45). These findings of fact may be summarized as follows:

1. *The nature of respondent's business.*—Respondent is a Pennsylvania corporation which, together with its 19 subsidiaries, transports, manufactures, sells and distributes a diversified line of steel, pig iron, and other materials (R. 23–26; Bd. Exh. 4). It is the fourth largest producer of steel in the United States, employing over 22,000 persons. About 10,000 persons are employed at the respondent's plant at Aliquippa, Pennsylvania (R. 23–24; 88, 109, Bd. Exhs. 4, 5).

Like all large units of the steel industry, respondent is completely integrated. It owns and operates ore, coal, and limestone properties, and transports the ore and coal to its works by its own lake steamships, tugboats and barges. Respondent owns and operates two terminal railroads, one at the Aliquippa plant and another at the Pittsburgh plant, over which it receives and distributes materials and products. Each system of tracks is connected directly with all parts of the mills and yards which it serves, as well as with an important interstate trunk line. Cars are loaded and unloaded by respondent's employees with the help of respondent's cranes and loading equipment. Respondent alone makes 97 per cent of the shipments from Aliquippa over the Pittsburgh & Lake Erie

Railroad, a part of the New York Central System (R. 24–25; 99–102, 133, Bd. Exhs. 4, 5).

Many of respondent's employees are engaged in the distribution of its products in interstate commerce. Much of the steel and pig iron is shipped from Aliquippa to respondent's warehouses in New Orleans, Chicago, Detroit, Pittsburgh, Cincinnati and Memphis, the shipments to the last two cities named being by respondent's own barges and transportation equipment. In Long Island City, New York, and New Orleans, Louisiana, respondent operates structural steel fabricating shops in connection with the warehousing of semifinished materials sent there from Pittsburgh and Aliquippa. Sales offices are maintained in 20 cities of the United States, and there is a wholly-owned subsidiary devoted exclusively to the distribution of respondent's product in Canada. Enormous movements and transactions in interstate commerce are constantly carried on by respondent. In all, 80 per cent by value of the material received at the Aliquippa works originates outside the State of Pennsylvania, and 75 per cent of the product of that plant is sold and shipped in interstate commerce. (R. 25–27; 88, 112, 132, Bd. Exhs. 4, 7.) Most of the production at the Aliquippa plant is according to special order (R. 30; 86–87). An elaboration of the facts as to the character and extent of respondent's business is set forth in connection with the argument, *infra*, pp. 51–61.

2. *The Unfair Labor Practices.*—Beaver Valley Lodge No. 200 of the Amalgamated Association of Iron, Steel, and Tin Workers was chartered on August 4, 1934 (R. 31–32; 73, Bd. Exh. 48). Thereafter the union sought to organize the men in the Aliquippa Works. Respondent countered by systematic coercive efforts to prevent such organization. Officers and organizers of the union were followed about by respondent's police; some of the more important union officers were permanently shadowed and followed even into neighboring towns; a house in which a union meeting had been held was surrounded by respondent's private police, and respondent's employment agent sat near its door noting who entered; some persons coming out of the house were questioned and even beaten (R. 31–32, 34–36; 135–136, 144–145, 167–169, 179, 254–256, 303, 334–335, 339).

Respondent also resisted organization by vilification of the union and its leaders (R. 36–40; 180–181, 208, 224, 250, 337). Employees were told that respondent would not "stand for" the union, and that employees should leave it alone; that they should not attend the meetings or join (R. 35–40; 160, 179, 293, 303). One employee was told that if he continued his union affiliation the company could not tolerate his failure to pay back rents and would evict him, and that the local merchants would not extend credit to him (R. 40; 208–209).

In June 1933 respondent installed at its Aliquippa plant a so-called Plan of Employees' Rep-

resentation, providing for election of officers, meetings, and settlement of grievances. The adoption of the plan was not put up to respondent's employees; they were invited simply to elect employee representatives. (R. 33; 160–162.)

The 12 employees concerned in this case were dismissed during the period from July 1935 to January 1936. The Board found that the discharges of 10 of these men were the result of union activity and were intended by respondent to discourage membership in the union (R. 41).[1] All of them were active leaders in the union; several were officers, and others were leaders of particular groups (R. 42). In most cases slight reasons were assigned for the discharges—reasons which respondent normally had not considered sufficient for such action. Each discharge followed hurriedly upon discovery of some possible pretext (R. 42).[2] The employees discharged were engaged in various duties about the plant, such as operating cranes or nail machines, inspecting motors, driving tractors, and the like (R. 33–42).

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[1] The complaint was dismissed as to two of the men, no evidence concerning them having been presented (R. 42, 45).

[2] Record references to the most pertinent evidence on the unfair labor practices with respect to each employee are as follows: Gerstner, R. 143–144, 150–153; Phillips, R. 166–168, 170–171, 173–174, 154–155; Razzano, R. 177–183, 190; Volpe, R. 326–333, 323–324; Boyer, R. 284, 285–292, 295; Bozich, R. 275, 278–280; Dunn, R. 226–232; Maroll, R. 302, 307–311; Brandy, R. 247, 249–250, 258–262, 266; Cox, R. 208–208, 212.

Upon the basis of these findings, the Board concluded that respondent discharged the ten employees because of their union activity and thereby interfered with the rights of its employees guaranteed by Section 7 of the Act; discriminated in regard to hire and tenure of employment of said ten employees; and discouraged membership in the union; all of which constituted unfair labor practices within the meaning of subdivisions (1) and (3) of Section 8 of the Act (R. 43). By reason of the nature of respondent's operations and the nature of labor disputes in the industry, the Board also concluded that respondent's activities were unfair labor practices affecting commerce within the meaning of subdivisions (6) and (7) of Section 2 of the Act, in that they tended to lead to labor disputes burdening and obstructing commerce and the free flow thereof (R. 44).

The Board therefore issued an order (R. 44–45) requiring respondent to cease and desist from interfering with, restraining or coercing its employees in the exercise of their rights to self-organization and otherwise, as guaranteed in Section 7 of the Act, and from discouraging membership in the union or any other labor organization by discrimination in regard to hire or tenure of employment or any term or condition of employment; to reinstate with back pay the 10 men discharged in the commission of the unfair labor practices; and to post appropriate notices (R. 44–45).

On April 11, 1936, the Board filed in the court below its petition for the enforcement of its order (R. 972–974), and on May 9, 1936, filed an amendment thereto (R. 45a–45b). On June 15, 1936, the court entered its decree denying the petition (R. 977). A petition for rehearing was denied on July 15, 1936 (R. 980).

SUMMARY OF ARGUMENT

The National Labor Relations Act is an exercise of the power of Congress to protect interstate commerce from injuries caused by industrial strife.

Before this statute was enacted experience had shown that industrial strife was a recurrent burden upon the interstate commerce of the nation. Not only in its totality had such strife produced obstructions to commerce, but also in many individual instances such strife eventuated in conspiracies to restrain commerce or imposed such substantial burdens upon it that penalties or injunctions were applied under the Sherman Act. These facts are clearly shown by a survey of the results of individual disputes, the statistics with regard to the total number of such disputes, and repeated Federal activities in connection with industrial strife.

Congress, in dealing with this evil of industrial strife, might have approached the problem in either of two ways. It might have enacted a statute designed to remove the burden on interstate commerce after it had evidenced itself in a particular

case, as the Sherman Act did; or, it might have enacted a statute to deal with the causes of the burden in anticipation of their probable effect, as the Packers and Stockyards Act did. Congressional power to enact this second type of statute (hereinafter called the preventive power) extends at least as far as the power to enact a statute to control the burden after its appearance (hereinafter called the control power). *Stafford* v. *Wallace,* 258 U. S. 495, 525.

The National Labor Relations Act, which is an exercise of this preventive power, does not attempt to eliminate causes of strife in *all* enterprises. The statute and the mandate addressed to the administrative Board are specifically directed to the elimination of the proscribed practices only when they are found to be "affecting commerce" (Sec. 10 (a)). This phrase "affecting commerce" is defined in Section 2 (7) of the statute as "in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce." These words are plainly patterned upon language used in decisions of this Court in cases arising under other statutes enacted by Congress under the commerce power. This jurisdictional limitation, viewed in the light of the legislative history elsewhere set forth (see Brief for the Board in No. 365, *The Associated Press* v. *National Labor Relations Board,* p. 114), is manifestly a direction

to the Board to exercise the national power within the limits permitted by the Constitution. In other words, Congress has taken as the ambit of this particular preventive statute the boundaries to which it would be restricted were it exercising to the full its control power under appropriate legislation.

Of course, in eliminating these proscribed practices in situations which are likely to come within the control power of Congress, the application of the Act will upon occasion result in the prohibition of activities which, even if allowed to spend their force, would not result in industrial strife which did in fact come within the Federal control power. But, provided that when the practice was indulged in there was a reasonable likelihood that any industrial strife which resulted would be within the control power, the Board may apply the preventive measure. To hold otherwise would deprive Congress of any preventive power, since no one can predict with absolute accuracy, in advance of the complete development of the effects of a cause, exactly what those effects will be. Compare *Stafford v. Wallace*, 258 U. S. 495; *Chicago Board of Trade v. Olsen*, 262 U. S. 1. This lack of predictability is particularly true of industrial strife. Moreover, in eliminating the cause of an evil within the power of Congress, the Act may on occasion eliminate the cause of purely local evils. Indeed, this is almost inevitable, since a single event has multiple consequences. Yet plainly the existence of a granted Federal power cannot be limited by the collateral

consequences of its exercise. *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288.

The foregoing epitome of the statutory scheme makes it clear that the question of the validity of a specific application of the statute depends upon whether industrial strife resulting from the practices in the particular enterprise under consideration would be of the character which the Federal power could control if it occurred. The question of primary importance therefore is the extent of the Federal power of control. Since the language of this statute does not go beyond the ambit of this power, whatever it may be, the statute is clearly constitutional on its face, and the only issue is whether it has been constitutionally applied.

This Court has never had occasion to define the full extent to which industrial strife in the manufacturing, producing, or processing divisions of an enterprise engaged extensively in interstate commerce may be subjected to the exercise of the control power of Congress. It has, however, held that certain situations in these divisions are clearly within the control power, and has further laid down general principles which furnish standards for the proper appreciation of the full scope of that power.

It is well settled that an industrial dispute in such an enterprise involving an intent to affect commerce is within the control power of Congress. *United Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344; *Bedford Cut Stone Co.* v. *Stone Cutters' Ass'n*, 274 U. S. 37; *Duplex Printing Co.* v. *Deer-*

ing, 254 U. S. 443; *Loewe* v. *Lawlor*, 208 U. S. 274. Consequently, where the situation in a particular enterprise presents a reasonable likelihood that industrial strife, if it occurred, would involve an intent to affect commerce, the Board can apply the statute to that enterprise.

This Court has also recognized the principle that an industrial dispute having the necessary effect of substantially burdening commerce would be within the control power of Congress. *Industrial Association* v. *United States*, 268 U. S. 64, 81; *United Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344, 410–411. Hence, the statute is applicable to an enterprise which is shown by evidence before the Board to be of such a character that strife, if it occurred, would have such a necessary effect. The proper application of the statute to such situations depends, of course, on the precise scope of the "necessary effect" principle. Although the Court has recognized the principle it has not heretofore had occasion to define it. At a later place we present our views on the definition and scope of this principle on which the scope of the jurisdiction of the Board may in a particular case depend.

Lastly, the scope of the control power extends to recurring evils which in their totality constitute a burden on interstate commerce. This Court has stated that such recurrent evils may, after appropriate findings, be subjected by Congress to national supervision and restraint. *Stafford* v. *Wallace*, 258 U. S. 495; *Chicago Board*

of Trade v. *Olsen,* 262 U. S. 1. This principle extends to industrial strife in enterprises which receive a substantial part of their raw material from, or ships a substantial part of their products in, interstate commerce. *United Mine Workers* v. *Coronado Coal Co.,* 259 U. S. 344, 408; *United Leather Workers* v. *Herkert & Meisel Trunk Co.,* 265 U. S. 457, 469; *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548. Here Congress has found, and experience shows, that industrial strife in such enterprises constitutes such a recurring evil. Under this view of the control power the statute may be applied to the individual instances of this recurring burden—that is, to any enterprise which receives a substantial part of its materials from, or ships a substantial part of its products in, interstate commerce, and is dependent upon such commerce for the successful conduct of its business.

We believe that the instant case falls within each of these three situations in which the control power of Congress may be exercised.

The reasonable likelihood of a controversy with the intent to affect commerce might be demonstrated in either of two ways: First, evidence might be presented to the Board that in a particular situation the intent already exists; or second, evidence might be presented to the Board that the situation was comparable to, and of the same general type as, others out of which in the past there had evolved controversies with intent to affect commerce, or

that in the particular situation confronting the Board, such definite intention might reasonably be expected to develop. In the case at bar it is not claimed that there is evidence of the first sort; but there is abundant evidence that the situation is fraught with the risk that after strife developed it would involve the purpose to curtail the movement of goods in commerce. (See particularly pp. 40–42, *infra*.)

As previously stated, the Court has not yet determined the exact scope of the phrase "necessary effect of substantially burdening commerce." It undeniably includes situations in which the participants cannot be charged with a conscious specific desire to interrupt commerce. *United States* v. *Patten*, 226 U. S. 525. The statements of this Court make it clear that the application of this principle may depend upon the magnitude of the effect on commerce. The possible use of such a standard is entirely consistent with *Carter* v. *Carter Coal Co.*, 298 U. S. 238. Three possible definitions of the scope of the "necessary effect" principle may be advanced: (1) a necessary effect on commerce results from industrial strife occurring in an enterprise which lies within a well-defined stream or flow of commerce, or (2) a necessary effect on commerce results from industrial strife which restrains a substantial part of all the commerce in a particular commodity, or (3) a necessary effect on commerce results from industrial strife which restrains the movement of a substantial volume of

goods which would otherwise move in interstate commerce. The instant case falls within all three of these aspects of the principle, but this brief addresses particular attention to the first and second.

Lastly, the control power of Congress extends to individual instances of constantly recurring evils which, in their total effect, constitute a burden on interstate commerce. Such a burden is imposed by recurrent industrial strife in enterprises which receive a substantial part of their materials from, or ship a substantial part of their products in interstate commerce. The statute, therefore, was properly applied in this case, for the facts clearly show that respondent's enterprise is largely dependent upon interstate commerce both for its materials and for the marketing of its products.

Neither *Schechter Corp.* v. *United States,* 295 U. S. 495, nor *Carter* v. *Carter Coal Co.,* 298 U. S. 238, is here applicable. In the *Schechter* case it was urged that wages and hours in local industry bore a relation to interstate commerce by reason of an intricate chain of economic causes and effects. An effect on commerce which occurred in such a manner the Court characterized as indirect. The Act involved in the *Carter* case had as its purpose the "stabilizing" of the bituminous coal industry through regulation of prices and wages. The effect of wage cutting on interstate commerce was held to be indirect on the basis of the *Schechter* case. The collective bargaining provisions of that Act were,

as is clear from the face of the statute and from the opinion of the Court, ancillary to the wage fixing provisions and furnished the means through which regulations with respect to wages having the force of law were to be arrived at. On the other hand, the National Labor Relations Act is designed solely to eliminate the burden on interstate commerce caused by industrial strife. Such strife constitutes an interruption to commerce operating directly without "an efficient intervening agency or condition." Thus it deals with matters closely connected with commerce, does not go beyond what is necessary for the protection of commerce, and does not attempt "a broad regulation of industry within the State."

ARGUMENT

In the brief filed on behalf of the National Labor Relations Board in No. 365, *The Associated Press* v. *National Labor Relations Board,* we have shown that the National Labor Relations Act is a valid exercise of the commerce power of Congress. We have also shown, in that brief, that it may constitutionally be applied to that respondent, and that as there, and here, applied, it does not conflict with the Fifth, Seventh, or First Amendments. Finally, we pointed out in that brief that the provisions of the Act there, and here, before the Court are separable from other provisions (particularly Sections 8 (5) and 9) not there, or here, involved). We respectfully refer the Court, therefore, to that brief for the discussion of those questions. In the

present brief we shall consider only the question whether the Act may validly be applied to this respondent, an integrated enterprise engaged in the manufacture of steel and steel products, and their sale in interstate and foreign commerce.[1]

THE NATIONAL LABOR RELATIONS ACT, AS WERE APPLIED TO THIS RESPONDENT, IS A VALID EXERCISE OF THE POWER OF CONGRESS OVER INTERSTATE COMMERCE

The National Labor Relations Act constitutes an exercise of the power of Congress to protect interstate commerce from the burden and injury caused by industrial strife. As this Court stated in *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548, 570:

> The power to regulate commerce is the power to enact "all appropriate legislation" for its "protection and advancement" (*The Daniel Ball*, 10 Wall. 557, 564); to adopt measures "to promote its growth and insure its safety" (*County of Mobile* v.

[1] On the merits of this case, the Board made detailed findings (R. 33–42) with respect to the unfair labor practices engaged in by respondent (pp. 7–8, *supra*), and concluded that the respondent had discharged 10 employees under circumstances which constituted violations of Section 8, subsections (1) and (3) of the Act. Respondent offered no evidence on this question at the hearing before the Board. The Act provides that the Board's findings as to the facts, if supported by evidence, shall be conclusive (Section 10 (e)). Here the record clearly supports the findings and consequently respondent is not in position to overthrow them. *Florida* v. *United States*, 292 U. S. 1, 12; *Federal Trade Commission* v. *Algoma Lumber Co.*, 291 U. S. 67, 73.

Kimball, 102 U. S. 691, 696, 697); to "foster, protect, control and restrain" (*Second Employers' Liability Cases*, 223 U. S. 1, 47).

For many years before this statute was enacted there had been a recognition of the evil of constant industrial strife and of the magnitude of its effect on the commerce of the nation. During certain periods of readjustment the evil became more pronounced, the controversies more numerous and more apt to spread, through sympathetic action, to other enterprises in the industry or to other industries.

Moreover, not only did the total burden of a multitude of strikes bear heavily upon interstate commerce, but also, in many instances, industrial strife eventuated in conspiracies to affect commerce, or strikes which otherwise so substantially burdened it that in order to protect commerce punitive sanctions authorized by the Sherman Anti-Trust Act were applied.

The statute here involved cannot properly be considered apart from this background of industrial disputes and of previous attempts by the Federal government to meet this problem.[4] For that reason, we set forth at the outset a brief statement of this background. Following that, at pp. 31–86,

[4] The non-legal materials in the present brief were collected by the Division of Economic Research, National Labor Relations Board. David J. Saposs, Chief Economist; George S. Wheeler, Associate Economist; George Brooks, Assistant Economist; Jean M. Paton, Jacob Karro, Louis R. Becker, Elizabeth T. Bliss, Junior Economists.

infra, we will explain the nature of the statute, and the constitutional basis for the application of the provisions of Section 8, subsections (1) and (3) to this respondent.

THE BURDEN AND INJURY TO INTERSTATE COMMERCE RESULTING FROM INDUSTRIAL STRIFE

The paralyzing effect on interstate commerce of industrial disputes in enterprises similar to that of respondent is a matter of common knowledge. A strike or lockout ordinarily means the complete cessation of business. No materials flow in; no finished products flow out. Effects are immediately felt in other enterprises dependent upon the plant where the dispute occurs for their materials or semi-finished parts. Markets are disrupted; no business commitments can be made.

By way of illustration a brief sketch may be given of the steel strike of 1919–1920. That strike started in September 1919 and lasted until January 1920. For many weeks, more than 350,000 men were out.[5] Plants in Pennsylvania, Illinois, Ohio, West Virginia, New York, Colorado, and other States suspended operations.[6]

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[5] U. S. Senate, Hearings before Committee on Education and Labor, *Investigation of Strike in Steel Industries* (66th Cong., 1st Sess.), pp. 370–371, 411.

[6] For general accounts of the strike see R. 616–620 (testimony of John A. Fitch) and R. 927–932 (testimony of David J. Saposs). See also *Monthly Labor Review* (December 1919), pp. 79–94, 369; Senate Report No. 289, 66th Cong., 1st Sess., *Investigating Strikes in Steel Industries.*

The pages of *Iron Age*, the standard business publication of the industry (R. 928), reveal the effect of the dispute upon the iron and steel mill operations and the market. In the issue of September 22, 1919, published three days after the strike began, it was reported that the "general effect" of the strike "was to paralyze the iron and steel market. Not knowing just what they had to face, some mills directed their representatives to cease taking orders, and under no circumstances to promise definite deliveries against contracts or specifications" (R. 929). Cleveland reported a cessation of orders for pig iron (R. 929–930). Likewise in New York, business in pig iron was reported to have "taken a decided slump" (R. 930). Few offers for finished iron and steel "are being given serious consideration by selling agencies. What business has been taken is largely by mills which do not seem to be seriously threatened by strike curtailment of operations" (R. 930). The same issue of *Iron Age* reported that sympathetic strikes of seamen, cooks, and firemen, which would tie up lake iron boats, were threatened (R. 929).

Iron Age for October 2 reveals even more drastic dislocations of commerce. Pittsburgh reported that "everything in the steel trade is subordinate to the strike, and neither producers nor consumers are making any real effort to do business" (R. 930). Business in ferro alloys, structural materials, wire products and scrap were crippled in that city (R. 930–931) and in Chicago

(R. 931–932). The effect of the strike was already being felt in the mining and shipment of iron ore (R. 932).

The strike of 1919 is not, however, an isolated example of a burden on interstate commerce. In the steel industry itself major upheavals similar to that of 1919 have taken place at periodic intervals—1892, 1901, and 1909–1910 (R. 611–624). An industry-wide strike in 1934 was averted only by Federal intervention (R. 623–624). Smaller disputes that are constantly recurring (R. 948–949) must also be taken into account. The present critical situation is a matter of common knowledge.

Nor is this burden upon interstate commerce restricted to industry-wide industrial strife. Without detailed description, it may be pointed out that similar disorganization, obstruction, or even paralysis of interstate commerce may result from industrial disputes limited to particular areas of an industry, as in the case of the Pacific Coast lumber strike of 1934 (R. 944–946, Bd. Exh. 99. *Monthly Labor Review* (September 1935) pp. 656–659), or from an industrial dispute in a particular concern, such as the Chevrolet Motor Company strike of 1935 (R. 937–943. *Monthly Labor Review* (July 1935) pp. 83–84). Similar burdens upon interstate and foreign commerce were continually disclosed in the hearings before the National Labor Relations Board in the administration of the Act. See *First Annual*

Report, National Labor Relations Board (1936) pp. 137 *et seq.*

The picture of disruption of commerce caused by industrial strife could be enlarged indefinitely, and details furnished by studies made of the effects of particular strikes. We do not believe it necessary, however, to expand this material in order to illustrate a point which no one will deny. Likewise, it is unnecessary to give more than a summary statement to show the recurrent and continuous nature of the burden.

Industrial strife is of almost daily occurrence. The table in the Appendix (*infra*, p. 95), which gives the number of industrial disputes during each year from 1916 through June 1936, reveals the enormous total burden. In no year has the number of disputes fallen below 650—about two every day—and in some years the number has risen to over 3,500—ten every day. On the basis of similar statistics the Senate Committee on Education and Labor, in reporting the bill which became the present Act, said (Sen. Rep. No. 573, 74th Cong., 1st Sess., pp. 1–2):

> During the period from 1915 through 1921 there were on the average 3,043 strikes per year, involving the vacating of 1,745,000 jobs and the loss of 50,242,000 working days every 12 months. From 1922 through 1926 the annual average totaled 1,050 strikes, 775,000 strikers, and 17,050,000 working-days lost. From 1927 through 1931 the yearly average for disputes was 763, for em-

> ployees leaving their work 275,000, and for days lost 5,665,000. In 1933 over 812,137 workers were drawn into strikes, and in 1934 the number rose to 1,277,344. In this 2-year period over 32,000,000 working days were lost because of labor controversies.

The table in the Appendix also reveals that during certain periods industrial strife becomes particularly acute. Thus in the four years from 1919 to 1922 there occurred more than 10,000 labor disputes involving more than 8,000,000 employees. (See also R. 920–921). Among those which seriously burdened interstate commerce may be noted the strikes of harbor workers in 1919;[7] the strike of 250,000 railway trainmen in August 1919 (R. 926); the general steel strike of 1919–1920 (*supra* pp. 21–23); the strike of longshoremen in New York in October 1919;[8] the strike of 450,000 bituminous coal miners in November 1919,[9] the marine workers strike in May 1921 (R. 924–925); the general strike in the ladies' garment industry in November 1921;[10] the strike of meat packing employees in December 1921;[11] the New England textile strike which began in January 1922;[12] the widespread strikes in the bituminous and anthra-

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[7] See Perlman and Taft, *History of Labor in the United States*, p. 451.

[8] See *Monthly Labor Review* (December 1919), pp. 95–115.

[9] *Ibid.*, pp. 61–78.

[10] *Id.* (May 1922), p. 183. See also R. 925.

[11] *Ibid.*, p. 183. See also R. 923–924.

[12] *Id.* (May 1923), pp. 13–36. See also R. 925.

cite coal industries in April 1922,[13] the strike in the men's garment industry in New York in June 1922 (R. 925); and the general strike of the railway shopmen beginning in July 1922.[14]

A similar series of major industrial conflicts with equally burdensome effects on interstate commerce occurred in the years 1933 to 1935. Among the strikes of this period which seriously burdened commerce may be noted the maritime workers' strike on the Pacific Coast which began in May 1934 and led to the general strike in San Francisco (R. 946–948); the Minneapolis teamsters' strike in May 1934;[15] the national textile strike in September 1934 (R. 943–944); the strike of enamel workers in Terre Haute, Indiana, in March 1935, which led to a general strike in that city (R. 943–944); the strike in the Chevrolet Motor Company at Toledo, Ohio, in April 1935 (*supra*, p. 23); the Pacific Coast lumber strike in May 1935 (*supra*, p. 23); and the strike of shipbuilding workers in Camden, New Jersey, in May and August 1935.[16] In addition, major disputes threatening to tie up the steel, automobile, and lumber industries during 1934 and 1935 were prevented only by Federal intervention (R. 949).

As we have pointed out above, industrial strife is a burden on commerce not only in its totality, but

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[13] *Id.* (November 1922), pp. 1–22. See also R. 926.
[14] *Id.* (December 1922), p. 1–21. See also R. 926.
[15] *Id.* (July 1934), p. 84. See also R. 948.
[16] *Id.* (November 1935), pp. 1288–1290. See also R. 934.

also because frequently individual instances of such strife eventuate into conspiracies to affect commerce, or into burdens so great in their effect upon commerce as to be within the power of Congress to control under the Sherman Act or other appropriate legislation. That industrial strife often leads to these intentional restraints on interstate commerce is illustrated by the situations which have been before the Federal courts.[17] Moreover, in-

[17] *Coronado Coal Co.* v. *United Mine Workers*, 268 U. S. 295; *Bedford Cut Stone Co.* v. *Stone Cutters' Association*, 274 U. S. 37; *Loewe* v. *Lawler*, 208 U. S. 274; *Duplex Printing Co.* v. *Deering*, 254 U. S. 443. Among the reported cases in the lower federal courts in which injunctions were issued to restrain conduct arising out of industrial disputes in mining and manufacturing industries are the following: *Irving* v. *Neal*, 209 Fed. 471 (S. D. N. Y.); *Boyle* v. *United States*, 259 Fed. 803 (C. C. A. 7th); *Columbus Heating & Ventilating Co.* v. *Pittsburgh Building Trades*, 17 F. (2d) 806 (W. D. Pa.); *Wagner Electric Manufacturing Co.* v. *District Lodge No. 9*, 252 Fed. 597 (E. D. Mo.); *United States* v. *Workingmen's Amalgamated Council*, 54 Fed. 994 (C. C. E. D. La.). The following unreported cases where such injunctions were granted are referred to in Federal Antitrust Laws with Amendments (1930, ed.): *United States* v. *E. J. Ray* (p. 101); *United States* v. *Artery* (p. 134); *United States* v. *Bricklayers', Masons', and Plasterers' International Union* (p. 169); *United States* v. *Journeymen Stone Cutters Association* (p. 200); *United States* v. *Meyers* (p. 208); *United States* v. *Painters District Council No. 14* (p. 210); *United States* v. *Glaziers Local No. 27* (p. 214); *United States* v. *Painters District Council No. 2* (p. 219).

The cases enumerated constitute only a partial list of injunctions which have been issued in situations involving strikes, boycotts and other industrial strife. In both the texts dealing with the labor injunctions and the hearings of

dustrial disturbances with such potentialities are apparently increasing in number and intensity, due both to the increasing size and national character of modern business units and to the increasing growth of labor organization on a national scale. Such instances have arisen in the cases before the National Labor Relations Board. *First Annual Report, National Labor Relations Board* (1936) p. 141.

The magnitude of this burden on interstate commerce has for many years prompted Federal action by both the legislative and executive branches of the government in efforts to bring about industrial peace. Frequently this intervention has taken the drastic form of dispatching troops to the area of dispute (R. 408–412), as in the Pullman strike of 1894 (R. 411–412, 415–418, Bd. Exh. 64) and the steel strike of 1919–1920. At other times commissions of inquiry have been appointed by Congress, the President, or a cabinet officer to in-

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anti-labor injunction bills there is ample testimony to the effect that a vast number of injunctions are issued which never find their way into the reports. See Frankfurter and Greene, *The Labor Injunction* (p. 49). Thus, an inquiry by George Wharton Pepper disclosed that during the Railway Shopmen's Strike of 1922 nearly 300 injunctions were issued in the various federal courts, of which only 12 were reported officially. See Pepper, *Injunctions in Labor Disputes*, 49 A. B. A. Rep. 177 (1924). In 1928 President Green of the American Federation of Labor submitted to a Senate committee a "partial list of injunctions" (including state as well as Federal) totaling 389, a great majority of which were never reported. Hearings before a Subcommittee of the Senate Committee on the Judiciary on S. 1482, 70th Cong., 1st Sess., Feb. 1928, pp. 76–86.

vestigate or attempt an adjustment of the dispute.[18] On numerous occasions the President has made personal efforts to bring about an adjustment (R. 440–441, 451–453, 460, 466–469, 623–624, 949–950).[19] The Conciliation Service of the Department of Labor, established in 1913 (c. 141, 37 Stat. 738; U. S. C., Title 29, Sec. 51), has intervened in some 15,900 industrial disputes involving 16,000,000 employees (R. 434).[20]

Nor has Federal intervention in the past failed to consider or invoke means for the prevention of the burden on commerce resulting from industrial strife through elimination of its basic causes. As early as 1882 the United States Senate adopted a resolution directing its Committee on Education and Labor to undertake a study of labor disputes, to "inquire into the causes thereof and the agencies

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[18] *E. g.*, Commission appointed by the President to investigate the Pullman strike of 1894; U. S. Strike Commission, *Report of the Chicago Strike of June-July 1894* (1894) (R. 416); the investigation by a Senate committee of the steel strike of 1919 (see Sen. Rep. No. 289, 66th Cong., 1st Sess.); the President's Board of Inquiry for the Cotton Textile Industry, appointed to investigate and adjust the general textile strike of 1934 (R. 943–944); and the commission appointed by the Secretary of Labor to adjust the strike in the Goodyear Rubber Company plant in 1935 (R. 714–734).

[19] The frequency of Federal intervention is even more clearly shown by the numerous injunctions issued by the Federal courts. See footnote 17, pp. 27–28, *supra;* R. 405–408; Witte, *The Government in Labor Disputes* (1932), p. 84.

[20] See *Annual Reports of the Secretary of Labor*, 1913–1935.

producing the same, and to report what legislation should be adopted to modify or remove such causes and to provide against their continuance or recurrence." Extensive general inquiries for the purpose of working out a comprehensive scheme for dealing with industrial disputes were later undertaken by four subsequent commissions—the Industrial Commission of 1898, the Anthracite Coal Commission of 1902, the United States Commission on Industrial Relations of 1912, and the President's Industrial Conference of 1919–1920. See Brief for the Board in No. 365, *The Associated Press* v. *National Labor Relations Board*, pp. 60–66.

Moreover, in several fields the Federal government has dealt with industrial strife on a comprehensive, long-range basis. In the railroad industry, after an experience in legislation dating back to 1888, Congress in the Railway Labor Act of 1926, and in the 1934 amendments to that Act, applied the principles which it subsequently incorporated in the National Labor Relations Act. *Id.*, pp. 54–59. In war industries during the World War, the National War Labor Board, under the co-chairmanship of William Howard Taft and Frank P. Walsh, and other special boards appointed by President Wilson, intervened in hundreds of threatened and actual labor disputes throughout the course of the war. *Id.*, pp. 61–64. In the two years immediately preceding passage of the National Labor Relations Act, a rising tide of labor disputes, not unusual in periods of recovery from

depression, led to the establishment, *inter alia,* of the National Labor Board and its successor, the first National Labor Relations Board. *Id.,* pp. 66–68.

THE NATURE OF THE NATIONAL LABOR RELATIONS ACT

Federal legislation designed to eliminate or reduce burdens or obstructions to interstate commerce may take either of two forms. First, Congress might enact a statute designed to mitigate the burdens by dealing directly with each particular obstruction as it arose. The Sherman Anti-Trust Act (Act of July 2, 1890, c. 697, 26 Stat. 209; U. S. C., Title 15, Sec. 1) may be referred to as illustrative of this particular type of legislation. Or, second, Congress might have approached the problem by a statute dealing with the *causes* of this burden in anticipation of their probable effect. A statute of the first type will be referred to hereafter as an exercise by Congress of its "*control*" power and a statute of the second type will be referred to hereafter as an exercise by Congress of its "*preventive*" power. Both types of legislation are, of course, merely different means by which Congress may approach the problem of burdens on interstate commerce.

This power of Congress to enact preventive legislation is illustrated by the historical setting of the Packers and Stockyards Act. Many practices prevalent in the stockyards, and in the meat-packing industry in general, had been seriously burdening interstate commerce in both livestock and meat

products. In *Swift & Co.* v. *United States,* 196 U. S. 375, some of these practices were effectively punished under the Sherman Act. Congress, not content with action against particular individuals or combinations, then passed the Packers and Stockyards Act (Act of August 15, 1921, c. 64, 42 Stat. 159; U. S. C., Title 7, Ch. 9), designed to eliminate the causes of the burdens to interstate commerce. This Court, upholding the Act in *Stafford* v. *Wallace,* 258 U. S. 495, stated (p. 520):

> The language of the law shows that what Congress had in mind primarily was to prevent such conspiracies by supervision of the agencies which would be likely to be employed in it. If Congress could provide for punishment or restraint of such conspiracies after their formation through the Anti-Trust Law as in the *Swift Case,* certainly it may provide regulation to prevent their formation.

Many other examples of the exercise by Congress of this power to *prevent* evils which it could *control* could be cited. For present purposes, it will be sufficient to refer to the Grain Futures Act (Act of September 21, 1922, c. 369, 42 Stat. 998; U. S. C., Title 7, Ch. 1) (see *Chicago Board of Trade* v. *Olsen,* 262 U. S. 1) and the Railway Labor Act (Act of May 20, 1926, c. 347, 44 Stat. 577; U. S. C., Title 45, Ch. 8, as amended) (see *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548). In any event, the exist-

ence of the power cannot be doubted. Moreover, that it may be utilized in the field of industrial disputes has been indicated by the Court not only in *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks, supra,* but also in *United Mine Workers* v. *Coronado Coal Co.,* 259 U. S. 344, 408, and *United Leather Workers* v. *Herkert & Meisel Trunk Co.,* 265 U. S. 457, 469.

The National Labor Relations Act is an example of this preventive legislation, based on the admitted power of Congress to control certain types of industrial disputes when they have occurred. The Act does not deal with injuries to interstate commerce after they have occurred, but seeks to prevent their occurrence by the elimination of certain specified practices which Congress has found lead to such disputes.

Although Congress thus clearly has a power to prevent obstructions to commerce, it is equally clear that the preventive measures must bear a reasonable relation to the end sought to be achieved. The exercise of the preventive power must, in other words, bear a reasonable relation to the elimination of evils which could be subjected to the control power of Congress after they occurred. Congress cannot make the existence of an evil of national concern the excuse for regulating a large measure of affairs of purely local concern.

Nor has it done so in this Act. The Act does not attempt to eliminate causes of strikes in *all*

enterprises. The statute, and the mandate addressed to the administrative Board, are specifically directed to the elimination of the practices proscribed by Section 8 only when they are found to be "affecting commerce" (Section 10 (a)). This phrase "affecting commerce" is defined in Section 2 (7) of the statute as "in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce." These words are plainly patterned upon decisions of this Court in cases arising under other statutes enacted by Congress. This jurisdictional limitation, viewed in the light of the legislative history set forth in the Brief for the Board in No. 365, *The Associated Press* v. *National Labor Relations Board,* at p. 114, is manifestly a direction to the Board to exercise the national power within the limits permitted by the Constitution. In other words, Congress has taken as the ambit of this particular preventive statute the boundaries to which it would be restricted were it exercising to the full its control power. It has not endeavored to exercise its preventive power where it could not have exercised its control power under appropriate legislation.

In examining the nature of the evil to be anticipated before it requires the elimination of the practices the Board thus operates in a manner similar to that followed by Congress itself in other preventive legislation. Just as Congress found

in the stockyards and the packing industry certain evils which burdened interstate commerce, and undertook to prevent them by the Packers and Stockyards Act, and found similar evils on the grain exchanges and undertook to prevent them by the Grain Futures Act, so here the Board determines the existence or the probability of the occurrence of an evil which Congress could control. If it so determines in any particular case, it applies the preventive measures provided in the Act, for clearly such a case is one in which industrial strife would constitute a burden and obstruction to commerce.

This *ad hoc* application of this preventive statute is a milder exercise of the power of Congress than either the Packers and Stockyards Act or the Grain Futures Act. Those statutes apply generally to every person engaged in the industries regulated, while the present one is applied only after specific investigation as to the probable outcome of an industrial dispute in the particular enterprise concerned. Moreover, those statutes prescribe detailed regulation of a meticulous character with the intention of governing many of the details of the businesses. Here Congress seeks merely to eliminate the causes of particular evils, and has made no attempt to construct a plan or pattern for the general conduct of business.

One further characteristic of preventive legislation should be noted. In eliminating certain practices in situations in which the resulting industrial

strife would be likely to come within the control power of Congress, the application of the Act will upon occasion result in the prohibition of activity which, even if allowed to spend its force, would not result in industrial strife which did in fact come within the Federal control power. But, provided that when the practice was indulged in there was a reasonable likelihood that any industrial strife which resulted would be within the control power under appropriate legislation, the Board may apply the preventive measure."[11] To hold otherwise would deprive Congress of any preventive power, since no one can foretell with absolute accuracy what the exact effects of any cause will be. Com-

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[11] It is to be observed that the precise criterion upon which the Board's jurisdiction is based is whether *after* industrial strife had developed in the particular enterprise it would be within the control power of Congress. The issue before the Board is never whether the particular labor practice in question would, if continued, have led to industrial strife. We have shown in the brief for the Board in No. 365, *The Associated Press* v. *National Labor Relations Board*, at pp. 46–69, that experience completely supports the finding of Congress (Section 1) that protection of the right of organization of employees is an effective and reasonable means of preventing industrial strife. That issue, therefore, has been resolved for the Board by the findings of Congress.

The record in the case at bar contains much additional documentary evidence and expert testimony demonstrating the efficacy of the means established by this Act to mitigate or eliminate industrial strife (R. 401–564, 597–798, 800–970; Bd. Exhs. 64–71, 86–89, 91–110). This material is digested and separately published in *Governmental Protection of Labor's Right to Organize*, Bulletin No. 1, Labor Relations Board, Div. Econ. Research (1936).

pare *Texas and New Orleans R. Co.* v. *Brotherhood of Ry. Clerks*, 281 U. S. 548; *Stafford* v. *Wallace*, 258 U. S. 495; *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1. This lack of predictability is particularly true of industrial strife.

Moreover, in eliminating the cause of an evil within the power of Congress, the Act may also eliminate the cause of purely local evils. Indeed this is almost inevitable, since a single event has multiple consequences. Yet plainly the existence of a granted Federal power cannot be limited by the collateral consequences of its exercise. *Ashwander* v. *Tennessee Valley Authority*, 297 U. S. 288.

In principle, the present Act may be compared to a hypothetical statute delegating to an administrative agency the power to fix factors of safety for all bridges whose structural weakness "affects interstate commerce." Such a regulation could constitutionally be applied to every bridge used by

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The record also contains detailed evidence concerning the recurrent nature and causes of industrial strife in the steel industry (R. 608 *et seq.*, 877 *et seq.*; Bd. Exhs. 93, 95). See also H. Rep. No. 2447, 52d Cong., 1st Sess., *Employment of Pinkerton Detectives*, p. xi; Sen. Rep. No. 289, 66th Cong., 1st Sess., *Investigating Strike in Steel Industries*, p. 4. In summary, this history shows that there have been recurrent efforts on the part of the employees in the industry to organize; that since 1892 it has been the established policy of the larger steel companies to oppose such efforts; that as a consequence there has been continuous unrest and recurrent strife; that as long as this situation exists, such unrest and strife is "absolutely inevitable" (R. 632–633).

vehicles travelling in interstate commerce. Certainly it would not be invalidated simply because it would result in the protection of many vehicles engaged only in local commerce.

The foregoing discussion makes it clear that the question of the validity of a specific application of the present Act depends upon whether industrial strife in the particular enterprise under consideration could, if it occurred, be controlled by the Federal Government, under appropriate legislation. The question of primary importance, therefore, is the extent of the Federal power of control. Since the language of this statute does not go beyond the ambit of this power, whatever it may be determined to be, the statute is clearly constitutional on its face. The only issue is whether it has been constitutionally applied.

This Court has never had occasion to define the full extent to which industrial strife in the manufacturing, producing, or processing divisions of an enterprise engaged extensively in interstate commerce may be subjected to the exercise of the control power of Congress.[22] It has, however, held

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[22] In the case at bar, in Nos. 420–421, *National Labor Relations Board* v. *Fruehauf Trailer Co.*, and in Nos. 422–423, *National Labor Relations Board* v. *Friedman-Harry Marks Clothing Co., Inc.*, the constitutional question raised is whether the Act may be applied to the manufacturing division of an enterprise engaged in interstate commerce. Of course, as is illustrated by No. 469, *Washington, Virginia and Maryland Coach Co.* v. *National Labor Relations Board*, the Act may also be invoked in connection with an enterprise engaged exclusively in commerce. In this brief it is unnec-

that certain situations are clearly within the control power, and has further laid down certain general principles on the basis of which it is possible to state three situations in which Congress may exercise its power to control burdens and obstructions on interstate commerce. We shall first briefly state these three situations, and shall then consider each one in detail with particular reference to its application to respondent.

(1) It is well settled that an industrial dispute involving an intent to affect interstate commerce is within the control power of Congress.

(2) This Court has also recognized that an industrial dispute having the necessary effect of substantially burdening or obstructing commerce is within the control power of Congress.

(3) This Court has also recognized that the control power of Congress extends to recurring evils which in their totality may constitute a substantial burden on interstate commerce.

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essary to discuss the situation which arises where the enterprise is engaged exclusively in commerce, since that point has already been discussed in the Board's briefs in No. 365, *The Associated Press* v. *National Labor Relations Board*, and is fully supported by *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548. Moreover, the language of Section 2 (7), which, together with Section 10 (a), establishes the jurisdictional limitations of the Board, distinguishes between labor practices which occur "in commerce" (that is, in enterprises such as an interstate transportation system), and labor practices which may be described as "having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce" (that is, in enterprises such as that of respondent).

We submit that in the application of the Act to respondent each of these three situations is presented. Of course, the existence of any one of the three is sufficient to sustain the jurisdiction of the Board.

THE VALIDITY OF THE ACT AS APPLIED TO THE RESPONDENT

(1) *The Power of Congress With Respect to Industrial Strife Involving an Intent to Affect Interstate Commerce*

It is well settled that an industrial dispute involving an intent to restrain commerce is within the control power of Congress, even though arising out of local activity. *Coronado Coal Co.* v. *United Mine Workers,* 268 U. S. 295; *Bedford Cut Stone Co.* v. *Stone Cutters' Association,* 274 U. S. 37; *Duplex Printing Co.* v. *Deering,* 254 U. S. 443; *Loewe* v. *Lawlor,* 208 U. S. 274. Consequently, where the situation in a particular enterprise presents a reasonable likelihood that a dispute, if it occurred, would involve an intent to restrain commerce, then the Board can apply the statute to that enterprise.

The reasonable likelihood of a dispute with the intent to affect commerce might be demonstrated in either of two ways: first, evidence might be presented to the Board that in a particular situation the intent already exists; or second, evidence might be presented to the Board that the situation was comparable to and of the same general type as those situations from which in the past there had

evolved controversies with intent to affect commerce, or that in the particular situation confronting the Board such definite intention might reasonably be expected to develop should the strife occur. In the case at bar is it not claimed that there is evidence of the first sort; but there is abundant evidence that the situation is fraught with the risk that after strife developed it would involve the purpose to curtail the movement of goods in commerce. This evidence is of three different sorts.

In the first place, respondent conducts a highly integrated national enterprise operating in some States mines and quarries which are the source of its materials, in other States steel mills and other manufacturing plants, and in still other States wholesale outlets for the distribution of its products. Moreover, it owns and operates certain transportation facilities operating in interstate commerce. In a far-flung, integrated enterprise of this type, controlled by a single employer, industrial strife in any division of the enterprise is peculiarly apt to involve a purpose to promote collective action among employees in other divisions of the enterprise in order to increase the bargaining power of all of the employees as against the common employer. Such a purpose can ordinarily best be effectuated by deliberately restraining commerce in every part of the enterprise. If the situation evolves into a pattern such as has been described, it would clearly come within the situations presented to this Court in *Loewe* v. *Lawler,*

208 U. S. 274; *Duplex Printing Co.* v. *Deering*, 254 U. S. 443; and *Bedford Cut Stone Co.* v. *Stone Cutters' Association*, 274 U. S. 37. The purpose of the boycotts in those cases was to promote collective action among employees other than those engaged in the boycott, and the local action taken was designed to effectuate an interruption of commerce. Here one of the purposes of industrial strife in any division of the enterprise would be to promote collective action throughout all of the divisions of the enterprise, and such local action as might be taken would be designed to effectuate a similar or more aggravated interruption of commerce.

In the second place, many of respondent's employees are engaged in interstate commerce or interstate transportation. Industrial strife, even if it did not originate with commerce employees, would be reasonably likely to spread to them in order to bring further pressure to bear upon the employer to come to terms with the employees engaged in the production divisions of the enterprise. This pressure could best be effectuated by stopping the movement of commerce into and out of the plant. Compare *Coronado Coal Co.* v. *United Mine Workers*, 268 U. S. 295.

Finally, the major points in the labor policies of respondent are correlated with those of other major steel companies through the Iron and Steel Institute. (Cf. Bd. Exh. 44.) All of those considerations which point to the likelihood of industrial strife with an intent to restrain commerce

where there is a single employer with diversified activities in many States, are present and have even greater force in an industry where all the employers treat themselves as a single employer with respect to their labor policies. In other words, industrial strife in the enterprise of any one employer is, as experience in the steel industry itself shows, likely to spread to other enterprises for the purpose of stopping shipments out of all plants in order to bring pressure to bear upon the industry as a whole.

Thus the evidence in this case warrants the conclusion that there is a reasonable likelihood that industrial strife in respondent's enterprise would, if it occurred, involve an intent to affect commerce. This conclusion is particularly justified in all situations where, as here, there is a probability of strife with respect to employees' basic rights to organize and choose representatives for collective bargaining. Such controversies are notoriously bitter and prolonged because of the fundamental issues at stake, tend to involve sympathetic action by organized employees in the same or related industries, and consequently are most likely to result in intentional interferences with sales or shipments in interstate commerce. Precisely such factors are manifested in the cases under the Sherman Act in which intent was found to exist. Cf. *Coronado Coal Co.* v. *United Mine Workers,* 268 U. S. 295, 297–298; *Bedford Stone Co.* v. *Stone Cutters' Ass'n,* 274 U. S. 37, 59–63 (Brandeis and Holmes, J. J.,

dissenting). Therefore, we submit that the Board was justified in holding that the preventive measures of the National Labor Relations Act should be invoked against respondent in order to anticipate that industrial strife affecting commerce which would have been within the control power of Congress.

(2) The Power of Congress With Respect to Industrial Strife the Necessary Effect of Which is Substantially to Affect Commerce

It is not necessary, however, to support the order of the Board in the present case upon the power of Congress to control industrial strife involving an intent to affect commerce. Alternatively, we submit that industrial strife in respondent's enterprise would be within the control power of Congress because it would necessarily have the effect of substantially burdening commerce.

This Court has recognized that Congress may exercise control over some industrial disputes even where intent cannot be or is not proven. For example, in *United Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344, a case which arose under the Sherman Act, this Court stated (pp. 410–411):

> * * * coal mining is not interstate commerce and obstruction of coal mining, though it may prevent coal from going into interstate commerce, is not a restraint of that commerce unless the obstruction to mining is intended to restrain commerce in it *or* has *necessarily such a direct, material, and substantial effect to restrain it that the*

intent reasonably must be inferred. [Italics supplied.]

This language was expressly approved in *Industrial Association* v. *United States,* 268 U. S. 64. The Court there pointed out that the strike in the first *Coronado* case was held not to constitute a conspiracy to restrain interstate commerce "in the absence of proof of an intention to restrain it *or* proof of *such a direct and substantial effect upon it, that such intention reasonably must be inferred*" (p. 81). [Italics supplied.] Further, the Court said that the Sherman Act was not applicable even if it were conceded that the natural result would be to keep the preponderant part of the output of the mine from being shipped out of the State, because "the effect on interstate commerce was not of such substance that a purpose to restrain interstate commerce might be inferred" (*Ibid.*). See also *United Leather Workers* v. *Herkert & Meisel Trunk Co.,* 265 U. S. 457, 471.

It may be argued that in these cases the Court in referring to such direct and substantial effects upon commerce stated that an *intent* must be inferred. But, this is equivalent to saying that that Act may constitutionally be applied to a situation in which there is no actual specific intent, but only a "necessary effect" on commerce. And it must follow that the power of Congress extends at least as far as the Sherman Act has been enforced—that is, to industrial strife which has only a "necessary effect" on interstate commerce.

Thus, the cases dealing with industrial disputes through the application of the Sherman Act establish the proposition that Congress may, by *ad hoc* action, control industrial strife irrespective of the amount of the reduction of the supply of the commodity involved if an intent to stop interstate shipments be shown (Cf. *Nash* v. *United States*, 229 U. S. 373), and that Congress may also take similar measures irrespective of a showing of specific intent where the reduction in the supply of the commodity is so large that an intent to burden and obstruct interstate commerce may be inferred (Cf. *United States* v. *Patten*, 226 U. S. 525).

The existence of this power of Congress to deal with industrial disputes which have only a "necessary effect" of burdening interstate commerce is borne out by the analogy of other cases under the Sherman Act, in which no specific intention was shown. Thus in *United States* v. *Patten*, 226 U. S. 525, this Court held that a conspiracy to corner cotton on an exchange was within the prohibition of the Sherman Act since "by its necessary operation it would directly and materially impede and burden the due course of trade and commerce among the States", and that it was therefore immaterial that there was "no allegation of a specific intent to restrain such trade or commerce" (p. 543). The same proposition is referred to in *Addyston Pipe & Steel Co.* v. *United States*, 175 U. S. 211, 243.

Indeed, unless the power of Congress extended to disputes with a necessary effect on commerce, the boundaries of Congressional power under the commerce clause would, in this respect, be measured by the state of mind of the persons whom Congress was attempting to control, and it cannot be supposed that such a startling proposition is sound. See *Schechter Corp* v. *United States,* 295 U. S. 495, 547–548; *United Leather Workers* v. *Herkert & Meisel Trunk Co.,* 265 U. S. 457, 472. The comment of the Court in *Railroad Retirement Board* v. *Alton R. R. Co.,* 295 U. S. 330, is apt here (p. 373): "The meaning of the commerce and due process clauses of the Constitution is not so easily enlarged by the voluntary acts of individuals or corporations."

The opinions of this Court do not clearly define the category of industrial strife with the necessary effect of substantially burdening interstate commerce. The reference in the first *Coronado* and *Industrial Association* cases (pp. 44–45, *supra*) to a "direct, material, and substantial effect" upon commerce indicates that one of the factors to be considered in determining whether industrial strife is of this type is the magnitude of the actual effect upon the interstate commerce in a commodity. Although we do not believe this need be the sole basis of decision, we believe that this might properly be accepted as one of the criteria. Indeed, in *International Organization* v. *Red Jacket*

C. C. & C. Co., 18 F. (2d) 839 (C. C. A. 4th), certiorari denied, 275 U. S. 536, this factor was chiefly relied on. There the contention was made that "a conspiracy to interfere with the operation of coal mines is not a conspiracy to restrain or interfere with interstate commerce." The court pointed out that in the second *Coronado* case (*Coronado Coal Co.* v. *United Mine Workers*, 268 U. S. 295) this Court had held that evidence that the capacity of plaintiff's mines was substantially more than 5,000 tons per day (as against the capacity of 5,000 tons per week which had been assumed in the first *Coronado* case) made, with other evidence as to intent, a case for the jury as to conspiracy to restrain interstate commerce. The Circuit Court of Appeals then went on to say (p. 845):

> Here it appears that the total production of the mines of complainants is in excess of 40,000,000 tons per year, more than 90 per cent of which is shipped in interstate commerce. Interference with the production of these mines as contemplated by defendants would necessarily interfere with interstate commerce in coal to a substantial degree.

It may be objected that a distinction based upon degree or magnitude is inconsistent with the decision in *Carter* v. *Carter Coal Co.*, 298 U. S. 238. We submit that it is not. In the *Carter* case the question was whether the relationship between wage-cutting and interstate commerce in coal was

direct or indirect."[28] The Court held that the relationship was indirect, since the effect on interstate commerce resulted through "an efficient intervening agency or condition" (pp. 307–308); that is, the effect of diverting the movement of interstate commerce resulted only through a causal chain proceeding from wage-cutting, which led to price-cutting, which in turn led to diversion of interstate shipments. In that situation, the Court made it clear that the extent of the effect was immaterial, even though it might be conceded to be substantial, since it could not be direct. The Court stated (p. 308):

> It is quite true that rules of law are sometimes qualified by considerations of degree, as the government argues. But the matter of degree has no bearing upon the question here, since that question is not—What is the *extent* of the local activity or condition, or the *extent* of the effect produced upon interstate commerce? but—What is the *relation* between the activity or condition and the effect? [Italics in original.]

In other words, where there is an efficient intervening agency or condition between the cause and the effect, "such effect * * * however exten-

[28] The Act before the Court in the *Carter* case also contained provisions with respect to collective bargaining, but as we shall show below (*infra*, pp. 88–90), those provisions were merely ancillary to the wage-fixing provisions, to be used as the means through which wage-fixing was accomplished.

sive it may be, is secondary and indirect. An increase in the greatness of the effect adds to its importance. It does not alter its character" (p. 309). Here, on the other hand, industrial strife with the necessary effect of burdening or obstructing commerce obviously constitutes a physical obstruction to commerce operating "proximately—not mediately, remotely, or collaterally" (p. 307) to produce that effect on interstate commerce. See pp. 21–31, *supra;* pp. 77–84, *infra.* Therefore, the *relation* being direct, the matter of degree or magnitude may become significant. See Cardozo, J., concurring, in *Schechter Corp.* v. *United States,* 295 U. S. 495, 554.

Magnitude of effect upon interstate commerce in a particular commodity need not, however, be the sole criterion upon which the Board is to decide whether industrial strife in any particular enterprise would have the necessary effect of burdening or obstructing interstate commerce. The investigation by the Board may cover the nature of the enterprise, including its size in relation to the industry as a whole, whether it is within a stream or flow of commerce, and the volume of interstate commerce both in raw materials and in finished products; the nature of the industry, including its national or local character, the size of its units, and whether one person or corporation owns or controls widely scattered units; and the likelihood of sympathetic strikes or boycotts by unions or

organizations other than the ones directly concerned.

It is unnecessary and, indeed, impossible to list all of the factors upon which the Board might rely. However, for purposes of simplification, and with no intention of exhausting the possibilities, three possible constructions of "necessary effect" may be suggested: (1) industrial strife has the necessary effect of burdening or obstructing interstate commerce when it occurs in an enterprise lying within a well-defined "stream or flow of commerce";[24] (2) industrial strife is of that type when its effect would be to prevent a substantial proportion of all the commerce in the particular commodity; or (3) industrial strife is of that type when its effect would be to prevent interstate sales or shipments of a substantial volume of goods which would otherwise move in interstate commerce.

We believe that for the purposes of the present case a discussion of the construction of "necessary effect" may be confined to construction (1) or (2), although *a fortiori,* the enterprise is also within construction (3). We turn, then, to a consideration of the nature of respondent, with particular attention to its position in a stream or flow of commerce.

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[24] In defining "affecting commerce" in Section 2 (7) of the Act, Congress including specifically those situations where there was a "flow of commerce."

The nature of respondent's operations

Respondent is the fourth largest company in the steel industry (R. 109; Bd. Exhs. 4, 5). The consolidated assets of respondent and its 19 subsidiaries totaled $181,532,641 as of December 31, 1934 (Bd. Exhs. 8, 18). It is "completely integrated", and is engaged directly in the transportation, production, acquisition, sale, and distribution of materials and products (Bd. Exh. 4). One of its two main plants is located at Aliquippa, Pennsylvania, where normally about 10,000 of respondent's more than 20,000 employees are employed (R. 88, 110; Bd. Exh. 4).

This Aliquippa plant is strategically located with regard to river and railroad transportation facilities. It stretches approximately five miles along the banks of the Ohio River (Bd. Exh. 4) below the juncture of the Monongahela and Allegheny Rivers. Respondent, therefore, has direct access to the cheap water transportation afforded by three great waterways, the Mississippi, Ohio, and Monongahela Rivers (Bd. Exh. 7). The respondent is also thoroughly equipped with trackage, locomotives, freight cars, and other railroad equipment in and around the plant. The tracks extend throughout the plant and into and out of the various buildings. (R. 100; Bd. Exh. 4.) Respondent owns and operates the Aliquippa & Southern Railroad Company (Bd. Exh. 4; R. 99–100)—43.20 miles of standard gauge track—which connects the Aliquippa plant with the Pittsburgh and Lake Erie Railroad, a part of the New York Central Railway

System (Bd. Exhs. 4, 5, 15, 50). About 450 employees are directly employed in railroad work within the plant (Bd. Exhs. 5 and 15; R. 101). The Aliquippa & Southern Railroad has 19 locomotives and 614 freight cars (Bd. Exhs. 5, 15). It reports to the Interstate Commerce Commission as a common carrier (Bd. Exh. 16). Respondent carries a considerable tonnage of its products to the South and Southwest over the Ohio and Mississippi Rivers, owning and operating transportation equipment (Bd. Exh. 4) consisting of steamers and barges (R. 120, 392). The barges are loaded by respondent's employees (R. 394).

It is evident that respondent's transportation facilities and activities are essential to and part of respondent's completely integrated business. Respondent, for the production of steel, is dependent upon three basic materials, iron ore, coke, and limestone (R. 82, 83), and it maintains its own reserves, mines and quarries at various points in the United States from which it obtains these basic materials. Respondent procures its iron ore from its ore reserves in the Lake Superior region, and in connection with one of its iron mines in that region, respondent operates a washing and concentrating plant (R. 98, Bd. Exhs. 4, 5). During the eight-year period ending December 31, 1930, respondent used approximately 3,570,000 gross tons of iron ore annually (Bd. Exh. 5). The iron ore, en route from the reserves in the Lake Superior region to Aliquippa, is first carried to the "upper lake ports"

by industrial railroads doing practically no other business (R. 594). The ore is then loaded on specially constructed lake ore carriers and is carried by way of the Great Lakes to respondent's docks at Ashtabula, Ohio (R. 99, 594; Bd. Exh. 4). In order to avoid interruption in the transportation of its supply of iron ore, the respondent owns and operates four of these ore boats on the Great Lakes (Bd. Exh. 4). Because the lakes are closed to navigation by ice from November to April, and in order to meet anticipated business requirements during that period, some of the ore is stored at respondent's lake docks at Ashtabula, Ohio, but the bulk of the ore used at Aliquippa is shipped from the lakes by rail without storage (R. 84, 85, 99, 107, 122; Bd. Exh. 4).

Respondent obtains its coal from its properties in Pennsylvania (Bd. Exh. 4; R. 84–85) where about 2,250 men are employed (R. 236). The coal is transported down the Monongahela and Ohio Rivers by a fleet of 10 towboats and 165 steel barges owned and operated by the respondent, directly to respondent's plants (R. 85, 89; Bd. Exh. 5). At the Aliquippa plant barges are unloaded by respondent's locomotive cranes (R. 102). The coal which is destined for the respondent's blast furnaces is reduced to coke in respondent's by-product plants (Bd. Exh. 4; R. 86).

Respondent's third main raw material, limestone, is shipped by rail from its properties in West Virginia (R. 85, 107).

Some idea of the huge bulk of the raw materials which flow into the Aliquippa works may be gained from the fact that in a representative month, October 1935, the plant received 6,222 full carloads and 237 less than carload lots of materials, 76.5 percent of which originated outside of the State (R. 133). This average of more than 200 inbound cars per day by railroad is exclusive of the heavy river traffic in coal. Most of these incoming products are used directly without storage (R. 84). About 97 percent of all the business of the Pittsburgh and Lake Erie Railroad at Aliquippa is dependent upon the continued operation of respondent's plant (R. 133).

This great bulk of material which flows regularly in interstate commerce to Aliquippa with the aid of respondent's transportation facilities is unloaded by respondent's own employees and equipment, continues its course through respondent's works over respondent's trackage and equipment, and finally moves on to respondent's customers throughout the world with the aid of respondent's transportation facilities, from one or another of respondent's departments in the form of steel in various stages of fabrication. Respondent's product is sold in both semifinished and finished forms (R. 88). Each of respondent's departments has its own shipping department to handle materials which are forwarded to customers from that department. Employees are engaged in these various shipping departments to see that

orders of customers are carried out and to handle goods which are being placed on cars or barges ready for shipment (R. 102). Respondent produces steel largely in accordance with orders or specifications of customers (R. 86-87).

In the production of steel the blast furnaces are loaded with coke, ore and limestone, in successive layers, and the iron ore is reduced to molten iron. From the blast furnaces the molten pig iron is poured either into the Bessemer converters or the open hearth furnaces (R. 82). It is at this stage that variations in the steel, according to customers' specifications, are first made (R. 86). At the Aliquippa plant very little of the product of the blast furnaces is allowed to cool as pigs, but is used in molten state to produce either Bessemer or what is called "open hearth" steel (R. 82). From the open hearth or Bessemer converter the steel is poured into ladles, and from the ladles into molds. When it is cool enough the mold is removed and the ingot is moved into the soaking pit. The soaking pit is an underground furnace where the ingots are brought up to an evenly distributed temperature proper for rolling. From the soaking pit the steel is taken to the blooming mill where it is rolled into rectangular, flat pieces of steel, called "slabs" or square pieces called "blooms". The slabs go to the shear and are shipped outside of the plant to the respondent's South Side Works (R. 83). The blooms are reduced to billets, or sheet bar or skelp and are either sent to the various depart-

ments for further fabrication or shipped to customers outside the plant (R. 83). About 30 per cent of this semifinished steel is sold by respondent at this stage (R. 103).

The operations at the Aliquippa works are "a continuous process" (R. 101). They are based largely upon the use of molten pig, "So that when pig iron is made, it has to be processed as quickly as possible" (R. 118). One operation furnishes the material for the next, and at each step it is necessary to move heavy, bulky materials with a minimum waste of time. The handling of materials as they pass from one department to another is done by rail and by cranes. The cranes "not only control the flow of materials from one department to the next, but if that material was sold at one given point the crane men would load it into a railroad car at that point" (R. 101). In the seamless-tube department there are, for example, 22 cranes and 52 crane men (R. 202).

Rapid handling of materials and expeditious shipment of the product at whatever stage it is sold is made necessary because respondent works largely to customers' specifications and orders. On the average, customers' orders can be filled within one week (R. 118). Customers are dependent upon and expect uninterrupted operation of respondent's Aliquippa plant (R. 104). Respondent employs trace clerks to handle requests that come in from customers for assistance in effecting prompt deliveries (R. 116–117, 128). The trace clerks fol-

low up the movement of steel in shipment until it is delivered at the customer's place of business (R. 128). Respondent also occasionally traces late incoming shipments in order to expedite them (R. 128).

Respondent states that "100 industries look to J. & L. for steel" (Bd. Exh. 21), and that its metallurgists "are customer men in a double sense. They exercise strict control of quality in the metal for your protection, and they are also available for consultation on any steel problem you may have" (Bd. Exh. 20). A part of respondent's product is shipped by railroad to its customers; for this purpose the Pittsburgh & Lake Erie Railroad furnishes an average of 1,900 cars each month or more than 60 cars per day (R. 112). This constitutes about 97 per cent of all the business of the railroad at Aliquippa (R. 133). As previously described, respondent also ships a considerable tonnage of its products down the Ohio and Mississippi rivers with its own transportation equipment.

In order to facilitate the distribution of its products "the corporation has large steel warehouses located at strategic points over the country through which it markets a substantial tonnage of its products" (Bd. Exh. 4). These warehouses are in part located in large cities along the Ohio and Mississippi rivers where they can be reached by the respondent's own barges. In addition, the respondent has warehouses in Chicago, Detroit, and Long Island City, N. Y. (Bd. Exh. 7). From the ware-

houses the steel products are transshipped by rail to customers (R. 107).

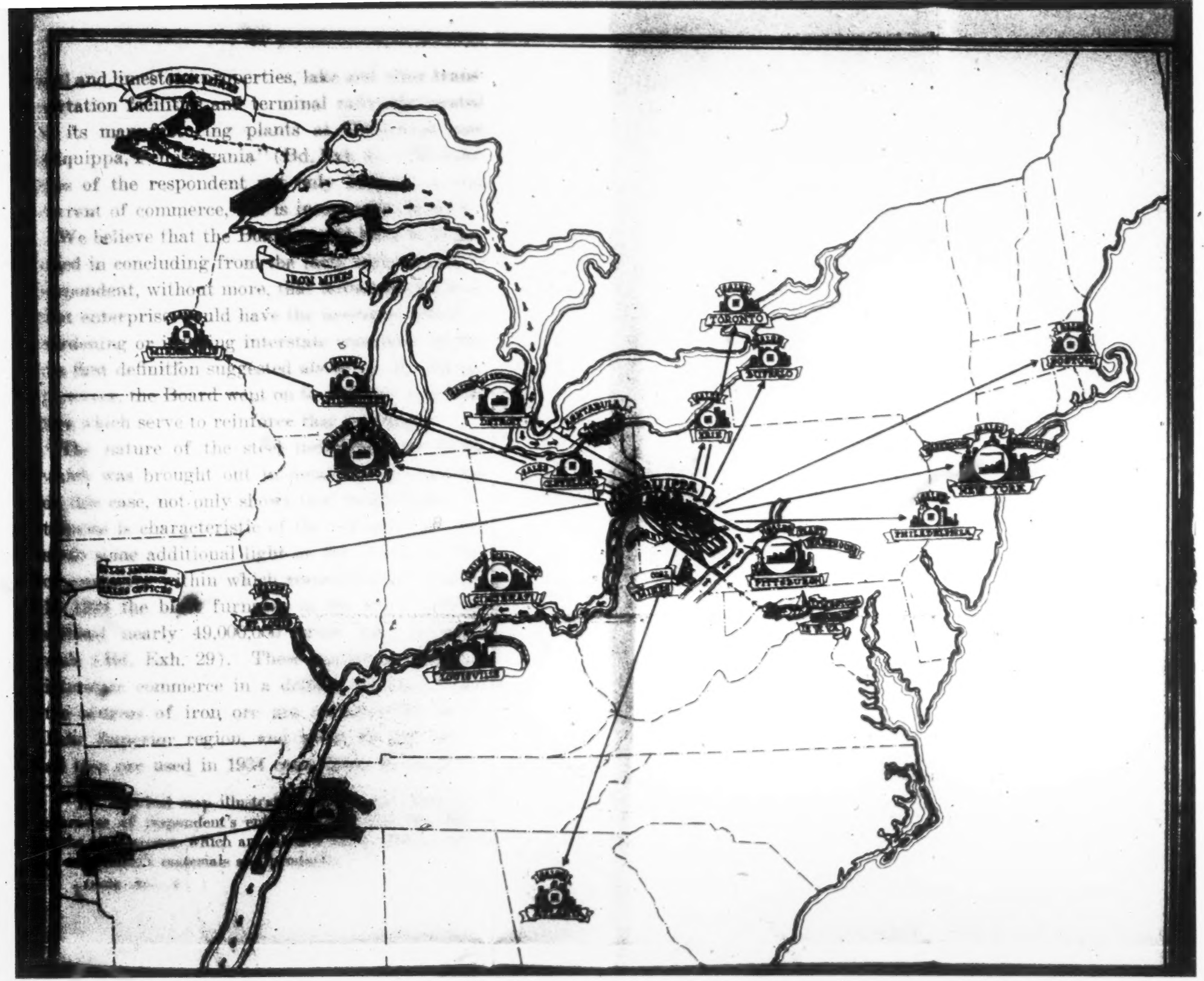
In connection with two of these warehouse points the respondent operates structural steel fabricating shops. Here the semifinished steel is further adapted to customer specifications (Bd. Exh. 5). Through one of its subsidiaries, the Louisiana Erecting Co., respondent "conducts a general erecting business, using principally materials fabricated by the [respondent] at its New Orleans Warehouse" (Bd. Exh. 5). It thus appears that the stage of "manufacture" is not completed at Aliquippa, but rather that the operations there constitute steps in the series of integrated activities involved in producing and distributing steel.

According to the respondent its "products are sold to its customers throughout the United States and many foreign countries, principally through its own sales offices located in twenty of the larger cities of the country. Its sales in Canada are marketed through its subsidiary the Jones and Laughlin Steel Products Company with its offices in Pittsburgh and Toronto, Canada" (Bd. Exh. 4). In common with the other large steel corporations, the respondent sells its product only upon the basis of delivered price (Bd. Exhs. 40, 41).

From this record it is evident that the Jones & Laughlin Steel Corporation is a nationwide enterprise. It regularly draws its materials in well defined paths of commerce from its properties in various States to its works at Ali-

quippa. At the Aliquippa plant the bulk of these materials pass first into the blast furnaces and from there to the converters or open hearth furnaces. From this point on the stream differentiates and moves into and from the various departments according to consumer orders. In any event, both technological necessity and customer interest make the movement of materials and fabrication of products a continuous process. The respondent markets these products in interstate commerce through its own organization and performs, or retains control of, the transportation of the products to the point of consumption. A considerable proportion of respondent's employees are directly engaged in this work of transporting materials to the plant, moving materials within the works, preparing shipments and loading them according to customer specifications, and finally in warehousing and transporting products to customers in respondent's equipment. The extensive ownership by the respondent of the means of transporting this flow of goods to and from its Aliquippa plant is itself conclusive evidence of a regular and definite stream of commerce. Otherwise such private ownership of transportation equipment would not be feasible.

With this background of fact we can fully appreciate the statement of respondent to the Securities and Exchange Commission that it is "completely integrated, owning and operating ore,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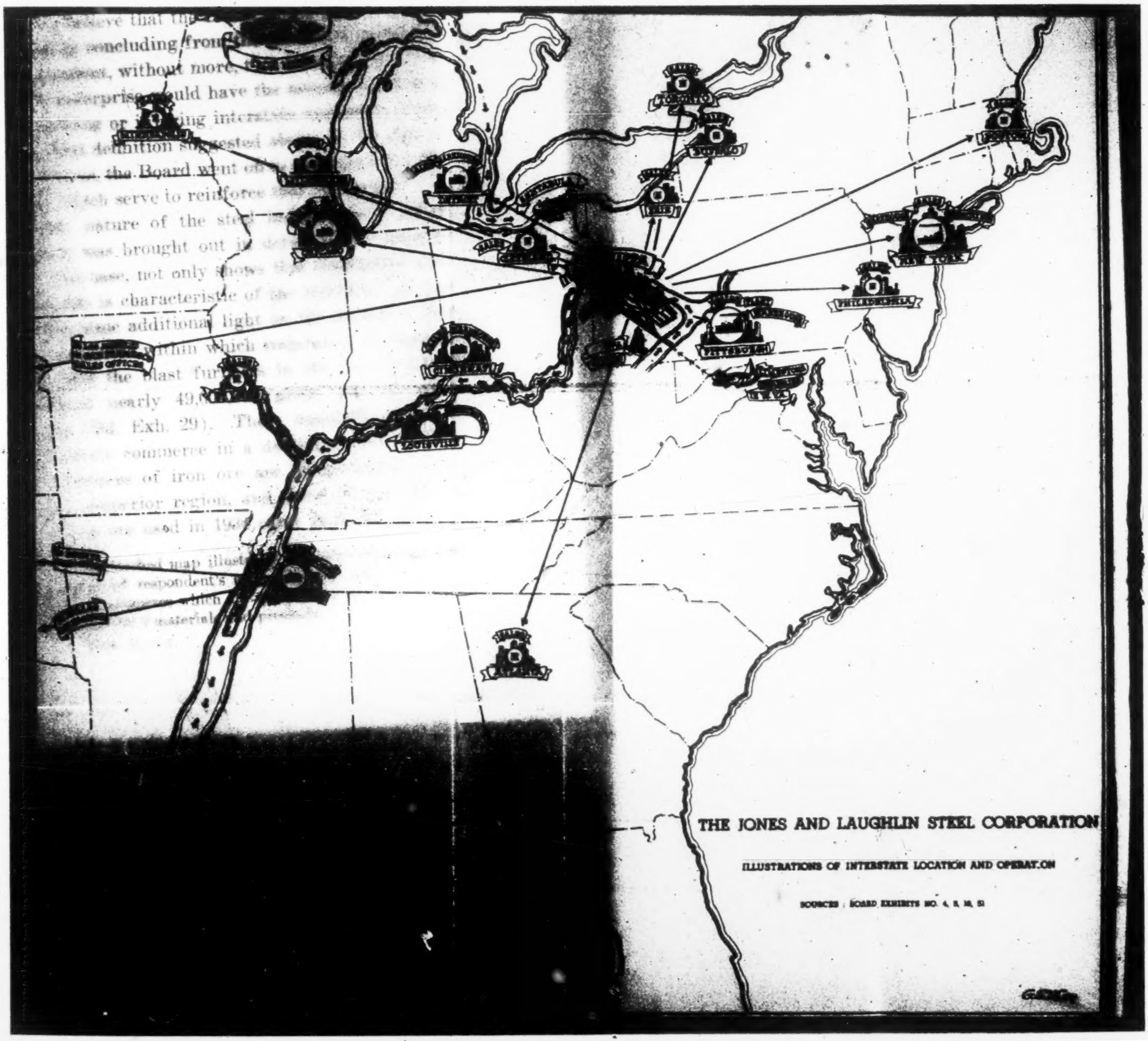
TORONTO
BUFFALO
NEW YORK
PHILADELPHIA
LOUISVILLE
THE JONES AND LAUGHLIN STEEL CORPORATION
ILLUSTRATIONS OF INTERSTATE LOCATION AND OPERATION
SOURCES: BOARD EXHIBITS NO. 4, 8, 10, 21

coal and limestone properties, lake and river transportation facilities and terminal railroads located at its manufacturing plants at Pittsburgh and Aliquippa, Pennsylvania" (Bd. Exh. 4). The business of the respondent not only initiates a vast current of commerce, but is inseparable from it."[25]

We believe that the Board would have been justified in concluding from the facts with respect to respondent, without more, that industrial strife in that enterprise would have the necessary effect of burdening or injuring interstate commerce within the first definition suggested above (p. 51, *supra*). However, the Board went on to consider other factors which serve to reinforce that conclusion.

The nature of the steel industry as a whole, which was brought out in detail in the hearings on this case, not only shows that respondent's enterprise is characteristic of the industry, but also sheds some additional light on the stream or flow of commerce within which respondent is situated. In 1934 the blast furnaces in the steel industry utilized nearly 49,000,000 gross tons of materials (Bd. Exh. 29). These materials moved in interstate commerce in a definite pattern. Thus the sources of iron ore are concentrated in the Lake Superior region, and about 85 per cent of all iron ore used in 1934 came from the mines of

[25] The attached map illustrates not only the nation-wide character of respondent's enterprise, but also the definite paths of commerce which are marked out by the movements of respondent's materials and products.

two States, Minnesota and Michigan (R. 572; Bd. Exh. 75). The large steel companies which use this ore own and operate ore mines, special lake carriers,[35] and the ore loading and unloading equipment at the docks (R. 575). Similarly, all of the important steel producing States, with the exception of Pennsylvania and Alabama, are dependent upon other States for their supply of coking coal, and even Pennsylvania, with its large coal deposits, imported one-fifth of its coking coal from other States (Bd. Exh. 78). Limestone is more widely deposited than suitable ore and coal, but here again there is a large interstate movement to the steel plants, as in the case of the respondent (*supra*, p. 54).

The steel plants to which all these essential materials are carried are, for the most part, concentrated in four States, Illinois, Indiana, Ohio, and Pennsylvania, in the path of commerce which brings the ore from the upper lake region to meet the coking coal from the Pittsburgh area (Bd. Exhs. 74, 78). With few exceptions the plants are at the junction of cheap water and rail transportation facilities either along the Ohio River system or on the southern shores of Lake Michigan and

[35] The integration of this Great Lakes transportation with the steel industry as a whole is affirmed not only by the facts with respect to this respondent (*supra*, p. 54), but also by the Lake carriers themselves. See U. S. Senate, Hearings on S. 2582, *The Merchant Marine Act of 1935*, 74th Cong., 1st Sess., Part 4, pp. 558–560. *Cf.* Act of June 29, 1936, c. 858, 49 Stat. 1985.

Lake Erie (R. 576–577). Over a period of years there has been a considerable movement of steel plant capacity away from the Pittsburgh area to the Lake shores, but, significantly, this movement has not been out of this path of commerce but rather along it in the direction of the ore reserves and steel markets (R. 578; Bd. Exh. 74).

In recent years the steel industry has been characterized by continuous process production and production to customer orders. Blast furnaces are now contiguous to the open hearth furnaces and the rolling mills are placed close to the open hearth furnaces enabling continuous process production to be carried on without periodic stoppages during the process of manufacturing (R. 574–575). After fabrication, the steel is usually shipped directly to some customer to whose specifications it had been shaped from the open hearth stage (R. 86–87; Bd. Exh. 35).[37] The essential continuity of the flow of materials from the steel plants is illustrated by the statement of the President of the United States Steel Corporation that "The production line of the automobile industry now begins back in the steel mills and we are in accord with any effort to keep it running more steadily through the years (R. 586).

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[37] See also *Steel Facts* (American Iron and Steel Institute, April, 1936), p. 6; U. S. Senate, Hearings on S. 4055, *To Prevent Uniform Delivered Price*, 74th Cong., 2nd Sess., p. 270.

The steel industry thus exhibits (1) an enormous and regular movement of materials in interstate commerce from the mines and quarries to the focal point of blast furnace and steel mills concentrated in four States, (2) a continuous processing according to customer specifications in the mills, and (3) shipment without storage of semi-finished and finished products to all parts of the nation and to foreign countries. If not the largest, at least this is one of the largest important patterns of interstate commerce in the industrial world.

A factor which renders this pattern of commerce peculiarly susceptible to disruption by labor disputes is that control is concentrated in large and completely integrated units. In 1934 two corporations, United States Steel and Bethlehem Steel, accounted for more than 51 per cent of the industry's ingot capacity. Less than a dozen corporations control more than 80 per cent of the capacity of the industry (R. 593–594, Bd. Exh. 84). This tendency toward large units and the merger of corporate control is not accidental, but arises from the nature of the industry and its integration of the successive stages of production, receipt and distribution of raw materials and finished products (R. 574–575; Bd. Exhs. 73, 84).

This practical limitation on the number of units in the industry necessarily gives greater significance to industrial disputes therein. Labor disputes in an industry consisting of small, autonomous, competing units, may be met by a diversion

of production and commerce from one unit to another. When, however, an industry is characterized by a few corporations and each controls a large part of a vital pattern of commerce, disruption of any one of these units necessarily burdens a substantial movement of interstate commerce. If, in addition, the employers' association of the industry speaks for the industry on important matters of labor policy, as the Iron and Steel Institute does (Bd. Exh. 44), unfair labor practices may well precipitate industry-wide strife which would disrupt the commerce of the entire industry and of industries dependent upon it. See *supra*, pp. 21–23.

We submit that in the light of these facts, industrial strife in respondent's Aliquippa plant would have the necessary effect of burdening and obstructing interstate commerce even if the limits of the "necessary effect" principle be narrowed as suggested in the first definition suggested above (p. 51, *supra*), *i. e.*, industrial strife which occurs in a well-defined stream or flow of commerce. And surely this very limited definition of "necessary effect of burdening or obstructing interstate commerce" is not too broad.

In enterprises within a well-defined stream there is an ever-present likelihood that any industrial dispute will choke off the stream completely, or at least seriously decrease its volume or force it into different and more burdensome channels. In such

enterprises, at least, the Court has already sanctioned the application of preventive legislation, even where the activities and practices burdened commerce only through the operation of indirect price relationships. *Chicago Board of Trade* v. *Olsen,* 262 U. S. 1. See also *Stafford* v. *Wallace,* 258 U. S. 495; *Tagg Bros. & Moorhead* v. *United States,* 280 U. S. 420. *A fortiori,* such preventive legislation may properly be applied to these enterprises where its purpose is to prevent the direct physical obstruction to the stream of commerce caused by industrial strife.

Respondent is engaged in a highly integrated interstate enterprise involving ownership of sources of supply, interstate transportation facilities, manufacturing plants, and outlets for distribution. This enterprise is dependent upon a great movement of iron ore, coal and limestone along well-defined paths to the steel mills, thence through them, and thence, in the form of steel products, into the consuming centers of the country—a "definite and well understood course of business." *Stafford* v. *Wallace,* 258 U. S. 495, 516. Industrial strife in the focal point of this stream—the Aliquippa plant—would cripple the entire movement of this great stream or flow of commerce.

It may be objected, however, that respondent's enterprise cannot be in a "stream or flow of commerce" because respondent engages in manufacturing, the raw materials being held within the plant for a time and then sent out in the form of

pig iron or steel. The objection is in direct conflict with the decision of this Court in *Stafford* v. *Wallace*, 258 U. S. 495.

The Packers and Stockyards Act, held valid in that case, defines the current of commerce there involved as including purchase or sale of livestock for slaughter within the State and shipments outside the State of the products resulting from such slaughter. Act of August 15, 1921, c. 64, 42 Stat. 159, Sec. 2; U. S. C., Title 7, Sec. 183. And in the *Stafford* case, *supra*, the Court said (p. 514):

> The object to be secured by the act is the free and unburdened flow of live stock from the ranges and farms of the West and the Southwest through the great stockyards and slaughtering centers on the borders of that region, and thence in the form of meat products to the consuming cities of the country in the Middle West and East, or, still as live stock, to the feeding places and fattening farms in the Middle West or East for further preparation for the market.

The Court thus recognized that stoppage for purposes of processing in the packing plant, involving a definite interruption in the physical movement and a very distinct transformation in the nature of the commodity, did not cause a break in the "stream" or "current" of commerce in the constitutional sense. See also *Chicago Board of Trade* v. *Olsen*, 262 U. S. 1.

Moreover, operations in the meat packing plants are as essentially manufacturing as are the opera-

tions at Aliquippa. It is common knowledge that meat packing involves a very extensive transformation in the nature of the commodity; this is fully brought out in the authorities upon which the Court relied in the Stafford case.[28] There, as here, the essential purpose of the processing operation is not merely to facilitate the flow of commerce, but also to halt it and to transform the commodities in question into things considerably different, by manufacturing or processing operations of varying degrees of complexity.[29] Indeed, due to the seasonal character of the supply of raw materials and the stable demand for meat products, with a consequent necessity for much storage, and to the necessary slowness of many of the operations in the meat-packing industry, such as chilling, curing and smoking, the delays or stoppages of the flow of products in that

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[28] *Hearings on Meat Packing Legislation*, 66th Cong., 2d Sess.; *Report on Meat Packing Industry*, Federal Trade Commission (1919).

[29] A recent description of the meat packing industry by one of the leading concerns states: "In many respects the American Meat Industry is like all other industries. It performs the indispensable function of converting raw materials into finished products and then distributing these products to thousands of retail outlets all over the country * * *. In most industries the manufacturer prepares or buys his raw material * * * adds a certain amount of labor and other expenses, and finally assembles his raw materials into a finished product. The meat packer * * * does exactly the opposite. He takes one unit of raw material, a live animal, and converts it into a great many products differing widely in character and marketability." Swift and Company, *Year Book*, 1935, pp. 15–16.

industry are frequently much longer than those in the operations of respondent (R. 118).

In describing the total effect of the flow of livestock and meat products from West to East, though interrupted at the packing plants in the manner described above, this Court said in *Stafford* v. *Wallace*, 258 U. S. 495, 518–519:

> The application of the commerce clause of the Constitution in the *Swift case* was the result of the natural development of interstate commerce under modern conditions. It was the inevitable recognition of the great central fact that such streams of commerce from one part of the country to another which are ever flowing are in their very essence the commerce among the States and with foreign nations which historically it was one of the chief purposes of the Constitution to bring under national protection and control.

This language is equally applicable to respondent's vast interstate enterprise already described, and to the steel industry as a whole, involving a great movement of iron ore, coal, and limestone along well-defined paths through the steel mills and thence in the form of steel products to the consuming centers of the country—"a definite and well-understood course of business". 258 U. S. at 516. The relationship of industrial strife at the respondent's Aliquippa plant to respondent's entire interstate enterprise is no less direct than that of local practices in the live-

stock industry at the point where the commodities are halted, become part of the mass of property within the State (*Minnesota* v. *Blasius*, 290 U. S. 1) and go through extensive processing operations.

Nor can it be said that the packers and stockyards illustration is peculiar because of the great public interest involved in the free and unburdened distribution of meat products in interstate commerce, for this alone does not create constitutional power where it does not otherwise exist. If such considerations were relevant, it could readily be demonstrated that uninterrupted commerce in the steel industry, of which respondent's enterprise forms one of the large units, is as important to our national commercial and economic life as is commerce in meat products.

However, even aside from the stream or flow aspect of the respondent's enterprise, we contend that industrial strife in respondent's enterprise would have the necessary effect of burdening and obstructing interstate commerce. If "necessary effect" be defined as suggested in (2), *supra*, p. 51, *i. e.*, industrial strife which has the effect of preventing or disrupting a substantial proportion of all the interstate commerce in a particular commodity, it is clear that respondent is within this second suggested definition.

This definition is supported by the considered statements in *United Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344; *Industrial Association* v. *United States*, 268 U. S. 64; and *Interna-*

tional Organization v. *Red Jacket C. C. & C. Co.*, 18 F. (2d) 839 (C. C. A. 4th), which are discussed above at pp. 44–48. Moreover, the extent of the actual burden and disruption of interstate commerce from strife in an enterprise such as respondent's, even if its location in a stream of commerce be ignored, shows the realism of such a definition. A strike or lockout in respondent's plant would mean the complete cessation of business, not merely the cessation of production. Materials in the amount of more than 200 freight cars per day would cease coming into the plant; the business of the Pittsburgh & Lake Erie Railroad at Aliquippa would be curtailed 97 percent; the respondent's enormous lake and river traffic in ore, coal and steel products would come to a halt. The functional coherence of the entire enterprise would be destroyed. The dispute might involve a number of plants or even the whole industry. Employees not engaged in production would be apt to become active participants through sympathetic action. Markets would be disrupted. No business commitments could be made. Orders would be curtailed, and if given could not be filled. Movements and trading would stop. The effect upon commerce would be direct, immediate, and substantial.

Therefore, the evidence in this case warrants the conclusion that there is a reasonable likelihood that industrial strife in respondent's enterprise would, if it occurred, have the necessary effect of substantially burdening interstate commerce. Accord-

ingly, we submit, the Board was justified in holding that the preventive measures of the National Labor Relations Act might be invoked against respondent in order to anticipate industrial strife affecting commerce which would be within the control power of Congress.

(3) *The Power of Congress with Respect to Constantly Recurrent Industrial Strife which Is a Burden upon Interstate Commerce*

This Court has on many occasions enunciated the principle that where Congress, after investigation, directs its legislation to the prevention of certain activities, even though usually only of local concern, which recur with such frequency as to constitute an undue burden on commerce, those activities may be subjected to the control power of Congress.

This principle is most forcibly illustrated by the historical setting of the Packers and Stockyards Act. At first, where attempts were made to bring individual practices within the scope of the Sherman Act, the trade practices of dealers and livestock men were held to affect interstate commerce only indirectly. *Hopkins* v. *United States,* 171 U. S. 578; *Anderson* v. *United States,* 171 U. S. 604. Later, however, an injunction under the Sherman Act was sustained where directed against activities of a combination of packers which fixed and manipulated prices and commission rates at

the stockyards and engaged in other practices in interstate rates and transportation proper. *Swift & Co.* v. *United States,* 196 U. S. 375.

Thereafter, in 1921, a preventive statute was passed—the Packers and Stockyards Act (Act of August 15, 1921, c. 64, 42 Stat. 159; U. S. C., Title 7, Ch. 9). That Act regulates the rates of commissions of market agencies and various unfair discriminatory or deceptive practices of such agencies and packers "in commerce" (Section 202). *Stafford* v. *Wallace,* 258 U. S. 495, presented the question of the application of the Act, not to the packers, but to the commission men and dealers in the stockyards. Arguing from the *Hopkins* and *Anderson* cases, *supra,* these dealers and commission men urged that their activities affected interstate commerce only "indirectly", that the Act sought to obliterate the line between the powers of the States and those of Congress, and that if it were sustained, there would be no limit to the scope of the power of Congress under the commerce clause. See 258 U. S. at 503–504. In rejecting these arguments, the Court pointed out that Congress had found, on the basis of long experience and investigation, that the local acts of commission men and dealers "constitute a direct and undue burden" on interstate commerce (*Id.* at 521) which worked an "injurious direct effect" (*Id.* at 525). In conclusion the Court said (pp. 520–521):

> The reasonable fear by Congress that such acts, usually lawful and affecting only intra-

> state commerce when considered alone, will probably and more or less constantly be used in conspiracies against interstate commerce or constitute a direct and undue burden on it, expressed in this remedial legislation, serves the same purpose as the intent charged in the Swift indictment to bring acts of a similar character into the current of interstate commerce for federal restraint. Whatever amounts to more or less constant practice, and threatens to obstruct or unduly to burden the freedom of interstate commerce is within the regulatory power of Congress under the commerce clause, and it is primarily for Congress to consider and decide the fact of the danger and meet it.

The result is illustrated graphically by other cases under the same statute, as compared with the earlier decisions under the Sherman Act. Thus the Packers and Stockyards Act has been applied to the conduct of a boycott by a dealers' exchange association (*United States* v. *American Livestock Association Co.*, 279 U. S. 435) and rates of commission for brokers in the stockyards have been fixed thereunder (*Tagg Bros. & Moorhead* v. *United States*, 280 U. S. 420) without regard to intent to affect interstate commerce. Yet the application of the Sherman Act in like circumstances had previously been denied in the *Anderson* and *Hopkins* cases.

The principle that Congress may legislate with respect to recurring practices burdening interstate commerce also finds expression in the legislation

relating to grain exchanges. In *Chicago Board of Trade* v. *Olsen,* 262 U. S. 1, the Court sustained the validity of the Grain Futures Act in its application to trading in futures which, as the Court made abundantly clear, was not in itself interstate commerce. Again, as in *Stafford* v. *Wallace, supra,* the Court pointed to the dangers which were reasonably to be expected from speculation in grain futures, and concluded (p. 40):

> By reason and authority, therefore, in determining the validity of this act, we are prevented from questioning the conclusion of Congress that manipulation of the market for futures on the Chicago Board of Trade may, and from time to time does, directly burden and obstruct commerce between the States in grain, and that it recurs and is a constantly possible danger. For this reason, Congress has the power to provide the appropriate means adopted in this act by which this abuse may be restrained and avoided.

In the *Olsen* case, as in *Stafford* v. *Wallace,* the Court relied upon a decision upholding the application of the Sherman Act in the same field. *United States* v. *Patten,* 226 U. S. 525. However, other prior decisions of the Court, such as *Ware & Leland* v. *Mobile County,* 209 U. S. 405; *United States* v. *Patten,* 226 U. S. 525, 544, and *United Mine Workers* v. *Coronado Coal Co.,* 259 U. S. 344, 410, show that in both the Packers and Stockyards Act and the Grain Futures Act Congress

has established and this Court has approved a scope of jurisdiction wider than that required for the purposes of the Sherman Act and more appropriately designed to achieve the Congressional purpose.[20]

Neither the *Stafford* nor the *Olsen* case can be distinguished on the ground that the evil thus aimed at was monopoly, and that Congress does not possess the same power with respect to other evils which constitutes obstructions or injury to interstate commerce. In summarizing the holding of these cases in *United Leather Workers* v. *Herkert & Meisel Trunk Co.*, 265 U. S. 457, the Court said (p. 469):

> What those cases decided was that when Congress found from investigation that more or less constant abusive practices and a course of business, usually only within state police cognizance, threatened to obstruct or unduly to burden the freedom of interstate commerce, it could by law institute supervision of such course of business in order to prevent the abuses having such effect.

The *Stafford* and *Olsen* cases show, therefore, that Congress may legislate with respect to bur-

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[20] To the same effect are the Federal Trade Commission Act (*Federal Trade Commission* v. *R. F. Keppel & Bro.*, 291 U. S. 304, 310; *Federal Trade Commission* v. *Gratz*, 253 U. S. 421, 427–429, Brandeis, J., dissenting), and various sections of the Clayton Act (*Standard Fashion Co.* v. *Magrane Houston Co.*, 258 U. S. 346, 356; *United Shoe Machinery Corp.* v. *United States*, 258 U. S. 451, 459–460).

dens or obstructions to commerce, even where the burdens develop out of local practices, where those practices and burdens are reasonably found constantly to recur. See also *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548.

It is, of course, obvious that this principle cannot be applied to all recurrent activity which is of only local concern. Such an application of the principle would undoubtedly conflict with our dual system of government. Hence it is necessary to establish that the injurious activities, considered individually, have a close and substantial relation to commerce.

At the outset, it is to be noted that the fact that the injury actually arises from local activities is of no moment. This was true in the *Stafford* and *Olsen* cases, and in *Texas & New Orleans Ry. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548. And it is well established as a general principle that Congress may remove burdens and obstructions to interstate commerce whatever the source of those injuries may be. *Schechter Corp.* v. *United States,* 295 U. S. 495, 544; *United States* v. *Ferger,* 250 U. S. 199.

For the purposes of the present case it is unnecessary to decide how close this relationship between commerce and the individual activity must be, for it is abundantly clear that industrial strife in what may be called an interstate enterprise—that is, an enterprise which receives a substantial

part of its raw materials from, and disposes of a substantial part of its finished products in, interstate commerce—bears a close relationship to interstate commerce. Industrial strife in such enterprises bears this relation to interstate commerce because it effectuates an actual interruption of commerce without "an efficient intervening agency or condition." *Carter* v. *Carter Coal Co.*, 298 U. S. 238, 307–308. It does not, in the words of the *Carter* case, operate "mediately, remotely, or collaterally" (*id.*, p. 307); rather, it actually stops the movement of goods. The decisions of this Court, the observations of impartial observers on the effects of such strife in these enterprises in the past, and the findings of Congress in the present Act are in accord on this conclusion.

This close relationship is demonstrated by the cases in which the Sherman Act has been held applicable to boycotts and strikes called or conducted with an intent to affect interstate commerce. *Coronado Coal Co.* v. *United Mine Workers*, 268 U. S. 295; *Bedford Cut Stone Co.* v. *Stone Cutters' Association*, 274 U. S. 37; *Duplex Printing Co.* v. *Deering*, 254 U. S. 443; *Loewe* v. *Lawler*, 208 U. S. 274. In each of these cases there was a showing that the conspirators employed means "calculated to carry that intent into effect." *Carter* v. *Carter Coal Co.*, *supra*, at p. 304. That "means", in several of the cases, was the cessation of production or other comparable activity, which caused interstate commerce in the commodity produced to cease or be curtailed.

Precisely this same cessation of production, immediately resulting in a cessation or curtailment of interstate commerce, is the consequence of industrial strife in interstate enterprises such as those above described. The impact on interstate commerce is precisely the same as that which existed in those cases. The intent which was present in those cases certainly cannot increase the burden on commerce, nor constitute the only method by which the relationship of injurious activities to that commerce may be accomplished. Indeed, this Court has recognized that fact; in *Stafford* v. *Wallace*, 258 U. S. 495, the opinion points out that the finding of Congress of the recurrent nature of the abuses serves the same purpose as the intent charged in the indictments under the Sherman Act (pp. 520–521):

> The reasonable fear by Congress that such acts, usually lawful and affecting only intrastate commerce when considered alone, will probably and more or less constantly be used in conspiracies against interstate commerce or constitute a direct and undue burden on it, expressed in this remedial legislation, serves the same purpose as the intent charged in the Swift indictment to bring acts of a similar character into the current of interstate commerce for federal restraint. * * *

See also 258 U. S. at 525.

The relationship of industrial strife to interstate commerce is even more clearly illus-

trated by *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks,* 281 U. S. 548. The decision in that case stands clearly for the proposition that at least as far as the railway industry is concerned, the burden upon interstate commerce arising out of industrial strife is sufficiently direct to constitute a valid basis for the exercise of the power of Congress to deal with recurring practices which affect that commerce. We believe that in that respect no distinction can be drawn between railroads or other agencies of interstate transportation and communication and large interstate enterprises such as that of the respondent in the present case.

In the first place, it is obvious that the validity of the Railway Labor Act does not depend on the fact that the employees with whom it is concerned are engaged in interstate commerce. Actually, many of the employees associated in the Brotherhood of Railway Clerks were engaged in purely local activities. That Act is valid because it prevents practices which are likely to and have been considered by Congress to obstruct interstate commerce. It is wholly immaterial whether these burdens find their source in intrastate or interstate activity. Congress clearly may deal with obstructive practices even though they are purely local in origin. *Stafford* v. *Wallace, supra; Chicago Board of Trade* v. *Olsen, supra; Second Employers' Liability Cases,* 223 U. S. 1, 51; *United States*

v. *Ferger*, 250 U. S. 199; *Schechter Corp.* v. *United States*, 295 U. S. 495, 544.

The *Texas* case can be distinguished, then, only upon a showing that industrial strife on the agencies of transportation can reasonably be expected to be more injurious to interstate commerce than industrial strife in an interstate enterprise. We believe that no such showing can be made. A simple illustration will make the point clear. The Pittsburgh & Lake Erie Railroad derives 97 percent of its shipments to and from Aliquippa from respondent (R. 133). An industrial dispute on that railroad could be dealt with under the commerce power not merely because the employees involved would be employed by an interstate carrier, but because such a dispute would obstruct the shipment of materials and products received and shipped by respondent. Obviously, however, an industrial dispute at respondent's Aliquippa plant would also obstruct the receipt and shipment of respondent's materials and products not only over the Pittsburgh & Lake Erie, but also over every other railroad and every other type of carrier which transports articles to and from respondent's plant. Indeed, it is true that a strike of the employees on the Pittsburgh & Lake Erie might result in only a very slight obstruction to interstate commerce if respondent could arrange to receive its materials and to ship its product by water, motor lines, or other carriers, while a strike among the employees

of Jones & Laughlin at Aliquippa would completely stop all interstate commerce into and out of that plant.

The foregoing cases, we believe, prove conclusively that the relation between industrial strife and interstate commerce is immediate and substantial, and consequently within the principle above described.

This Court, indeed, has already stated that the power to subject recurrent local activities to national supervision and restraint applies to recurrent industrial strife arising out of local activity. In *United Mine Workers* v. *Coronado Coal Co.*, 259 U. S. 344, it was said (p. 408):

> Obstruction to coal mining is not a direct obstruction to interstate commerce in coal, although it, of course, may affect it by reducing the amount of coal to be carried in that commerce. We have had occasion to consider the principles governing the validity of congressional restraint of such indirect obstructions to interstate commerce in *Swift & Co.* v. *United States,* 196 U. S. 375; *United States* v. *Patten,* 226 U. S. 525; *United States* v. *Ferger,* 250 U. S. 199; *Railroad Commission of Wisconsin* v. *Chicago, Burlington & Quincy R. R. Co.,* 257 U. S. 563; and *Stafford* v. *Wallace,* 258 U. S. 495. It is clear from these cases that if Congress deems certain recurring practices, though not really part of interstate commerce, likely to obstruct, restrain, or burden

> it, it has the power to subject them to national supervision and restraint. Again, it has the power to punish conspiracies in which such practices are part of the plan, to hinder, restrain, or monopolize interstate commerce. But in the latter case the intent to injure, obstruct, or restrain interstate commerce must appear as an obvious consequence of what is to be done, or be shown by direct evidence or other circumstances.[21]

The relationship to interstate commerce of industrial strife recognized in these decisions of the Court may be said to be a matter of common knowledge. The brief survey of the history of industrial strife in this country set forth above (*supra*, pp. 21–31), shows the disastrous consequences to interstate commerce of such strife. The survey also demonstrates the justification for the view of Congress that this is a constantly recurring consequence of industrial strife.

Congress had before it, therefore, when it was considering the National Labor Relations Act, an extensive background upon which to base its legislation, all of which had been brought before its committees during hearings extending over a period of

[21] As the context shows, the obstructions in question were referred to as "indirect" only in the sense that they had first impact upon local activity. The Court here makes clear, and *Stafford* v. *Wallace* holds, that such practices when found to be recurring and likely to obstruct, restrain or burden interstate commerce may be subjected to national supervision and restraint.

two years."[23] Its finding, therefore, of the burden of industrial strife, is peculiarly deserving of weight. Section 1 of the Act states:

> The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce. * * *
>
> * * * * *
>
> Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest * * *.

Viewed in the light of the facts which Congress had before it, this finding cannot be held unreasonable, and should be accepted by the courts. As this Court said in *Borden's Farm Products Co.* v. *Ten Eyck*, 297 U. S. 251, 263: "Judicial inquiry does not concern itself with the accuracy of the legislative finding, but only with the question whether it so lacks any reasonable basis as to be arbitrary."

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[23] Hearings on S. 2926, 73d Cong., 2d Sess., Senate Committee on Education and Labor; Hearing on S. 1958, 74th Cong., 1st Sess., Senate Committee on Education and Labor; Hearings on H. R. 7978 (companion bill to S. 1958) 74th Cong., 1st Sess., House Committee on Labor. See also Sen. Rep. No. 573 and H. Rep. No. 1147, 74th Cong., 1st Sess.

See also *Stafford* v. *Wallace,* 258 U. S. 495, 521; *Chicago Board of Trade* v. *Olsen,* 262 U. S. 1, 37–38, 40; *Norman* v. *Baltimore & Ohio R. Co.,* 294 U. S. 240, 313–316.

There can be no doubt that if there exists, as we contend, this control power of Congress over recurrent industrial strife in interstate enterprises, the order of the Board in this case was within its jurisdiction. Respondent's operations have been summarized in the statement (*supra,* pp. 5–6), and are set out in great detail at pp. 51–61, *supra,* but for present purposes it is sufficient to point out that respondent is dependent upon three basic materials, iron ore, coal and limestone (R. 82, 83). Its iron is obtained from iron reserves, which it owns, in States other than Pennsylvania, chiefly in the Lake Superior region (R. 98). The coal, it derives chiefly from Pennsylvania (R. 84–85). The limestone is obtained from its properties in West Virginia (R. 85, 107). In percentages, the record shows that about 80 percent by value of the materials received at the Aliquippa plant originates outside the State of Pennsylvania, and 75 percent of the product of the plant is shipped in interstate commerce.

With respect to the distribution of its iron and steel products, it is obvious that its market is a national one. The record shows that respondent maintains large warehouses at various points throughout the country, from which it markets a "substantial part" of its products (Bd. Exh. 4).

Respondent itself states that its products are sold to its customers throughout the United States and many foreign countries, principally through its own sales offices located in twenty of the larger cities of the country. Its sales in Canada are marketed through its subsidiary the Jones and Laughlin Steel Products Company with its offices in Pittsburgh and Toronto, Canada (Bd. Exh. 4).

We submit, therefore, that industrial strife in respondent's enterprise is of the character which, by its recurrence, comes within the control of Congress. Consequently, the Board was justified in holding that the preventive measures of the National Labor Relations Act might be invoked against respondent in order to anticipate industrial strife affecting commerce which would be within the control power of Congress.

THE *CARTER* AND *SCHECHTER* CASES ARE NOT CONTRARY TO THE CONCLUSION OF THE BOARD IN THE INSTANT CASE

We have already, in dealing with various points in the argument above presented, referred to the decisions in *Carter* v. *Carter Coal Co.*, 298 U. S. 238, and in *Schechter Corp.* v. *United States*, 295 U. S. 495. However, the reliance of the court below on those cases justifies treating them in an extended fashion.

The distinction between this case and the *Schechter* and *Carter* cases goes to a fundamental distinction in the scope and purpose of the respective statutes involved. The statutes in

those two cases regulated basic manufacturing or producing factors—wages and hours—in order to stabilize labor costs throughout a particular industry, or industry generally. Legal justification adduced in support of the regulations was based upon the intricate economic effects of disparate labor costs upon the prices and movement of the product in interstate commerce.

In the *Schechter* case the Government attempted to sustain the validity of the regulation of wages and hours in the business of slaughtering poultry, by showing that wages and hours bore a relation to interstate commerce through a chain of economic causes and effects—the effect upon the price of chickens sold in local commerce which in turn affected the shipment of chickens into New York and other States. Similar effects could be traced to numerous other forms of activity, local in nature, and the regulation of wages and hours under such circumstances could not have been upheld without also imposing regulation of virtually every other factor in the operation of the business which entered into the price of chickens sold in New York trade. The contrast is marked between that statute and the present Act, which does not depend for its validity upon any such chain of economic causes and effects. The practices to which it applies are brought under regulation in order to prevent the immediate injury to interstate commerce which results from industrial strife.

The Bituminous Coal Conservation Act involved in the *Carter* case was enacted for the purpose of "stabilizing" the bituminous coal mining industry through a regulation of prices and wages by means of a coercive tax. All producers of coal in the United States were to be brought into a Code. This Code set up machinery for the fixing of minimum and maximum prices and the machinery for the determination of minimum wages and maximum hours of employment. The prices were to be established by governmental agencies. The wages and hours were to be established by agreement between the producers and representatives of the mine workers and were to have the force of law. Thus, wage agreements negotiated by collective bargaining in any district or districts of more than two-thirds of the annual tonnage and representatives of the majority of the mine workers in district or districts were to be accepted by all operators in such district or districts.

It may be contended, however, that the *Carter* case is directly determintive of the present case because the Act there involved contained a provision for collective bargaining which was among the labor provisions held unconstitutional. However, it is apparent that the scheme outlined above for the determination of wages and hours by means of collective agreements could not operate without some statutory protection for the right of collective bargaining of the mine workers. Thus the collective bargaining provisions, instead of being directly related to avoiding labor disputes interfering with

interstate commerce, were subordinated to the main purpose of stabilization of the industry and were in fact the means through which one of the stabilizing factors—the establishment of uniform wages and hours—was to be effected."

It is further to be noted that the labor provisions of that Act were applicable to every producer of bituminous coal and every employee in the industry within the United States.[34] There was no

[33] This is made clear by the brief for the Government in the *Carter* case. Thus on page 199 of that brief it is stated that "The Bituminous Coal Conservation Act regulates labor relations only because and in so far as they constitute an integral and essential element in the competitive process. Producers deny to their employees the right of collective bargaining and cut wage rates not because of anything having to do with the mining of coal in the sense of the physical removal of the coal from the ground but in order to gain an advantage over others in the sale of coal in commerce. The Act regulates such conduct by producers in order to prevent them from gaining such an advantage in selling coal."

The entire argument of the Government on the labor provisions of the Act is made in accordance with this keynote. The fact that the collective bargaining provisions would have the independent effect of preventing obstructions and stoppages of interstate commerce is stressed (p. 281), but a reading of the entire argument makes it clear that this feature was considered as incidental to the main purpose of stabilization of wages and hours.

[34] In its brief in the *Carter* case the Government argued that the price provisions were limited to sales in or affecting interstate commerce (See p. 146). No attempt was made by the Government to limit the applicability of the labor provisions and they were not considered as limited by any of the four Justices of this Court who thought that the price provisions were limited to sales in or affecting interstate commerce.

machinery for determining the application of the statute to those enterprises in which unfair labor practices tend to lead to disputes burdening or obstructing commerce.

Moreover, it is apparent from the opinion that the Court viewed the collective bargaining provisions of the Coal Act as merely an ancillary part of the plan of the Act to stabilize wage costs and prices. The Court stated that "the primary contemplation of the act is stabilization of the industry through the regulation of labor *and* the regulation of prices." 298 U. S. at 314. The further statement that "the controversies and evils, which it is the object of the act to regulate and minimize, are local controversies and evils affecting local work undertaken to accomplish that local result" (298 U. S. at 308–309) must be considered in the light of this fundamental purpose of the statute. The "controversies and evils" were regulated as part of a scheme for stabilization of wage levels, and since the end was not within Congressional power, all means to that end, including the collective bargaining provisions, were closed.

Finally, it should be noted that the National Labor Relations Act as here applied is concerned with activities which occur under circumstances closely related to a flow of commerce, and which directly affect that flow. In the *Schechter* case the flow of goods had ceased; in the *Carter* case the flow had not yet begun. In both cases the Court was careful to restrict its decision to that state of facts, and to distinguish the facts of cases

such as *Stafford* v. *Wallace* and the case at bar. In the *Schechter* case the Court emphasized (295 U. S. at p. 543):

> So far as the poultry here in question is concerned, the flow in interstate commerce had ceased. The poultry had come to a permanent rest within the State. It was not held, used, or sold by defendants in relation to any further transactions in interstate commerce and was not destined for transportation to other States. Hence, decisions which deal with a stream of interstate commerce—where goods come to rest within a State temporarily and are later to go forward in interstate commerce—and with the regulations of transactions involved in that practical continuity of movement, are not applicable here.

In the *Carter* case the Court in similar fashion stressed that "the case deals with commodities at rest before interstate commerce has begun", and expressly distinguished *Stafford* v. *Wallace* and similar cases as resting "upon the circumstances that the acts in question constituted direct interference with the 'flow' of commerce among the States." The Court concluded (p. 306):

> The restricted field covered by the *Swift* and kindred cases is illustrated by the *Schechter* case, *supra,* p. 543. There the commodity in question, although shipped from another state, had come to rest in the state of its destination, and, as the court pointed out, was no longer in a current or flow of interstate commerce. The *Swift*

> doctrine was rejected as inapposite. In the *Schechter* case the flow had ceased. Here it had not begun. The difference is not one of substance. The applicable principle is the same.

In the case at bar the vast interstate movement in the regular course of business of materials to respondent's plant in Aliquippa, such as coal, ore, and limestone, derived from respondent's own properties and largely carried in interstate commerce by instrumentalities owned and operated by it, has already been described. *Supra,* pp. 51–65. Such materials are destined for final rest only after further movement in interstate commerce beyond the State of Pennsylvania, in the form of iron and steel products.

The argument advanced herein does not carry the implication that the Federal power extends to the fixing of wages on the ground that differences between employers and employees over wages cause industrial strife. Wage regulation might well be thought not reasonably calculated to eliminate the causes of industrial strife, and hence not to bear a reasonable relation to the protection of commerce. Wage fixing would merely transfer the power to determine wages from the private parties to the Government, and differences would still exist over the wages which should be paid in excess of the fixed minimum. True, the number of conflicts might be somewhat reduced, but it seems clear that they would still be numerous. On the other hand protection of the right of employee organization

and collective bargaining has been proved by experience to be calculated to eliminate one of the most serious causes of industrial strife. In the railroad industry, for example, the enactment of parallel legislation has virtually eliminated industrial strife. See Brief for the Board in No. 365, *The Associated Press* v. *National Labor Relations Board,* pp. 56–58. Moreover, this Court has held in the *Texas & New Orleans* case that such legislation is reasonably related to the protection of commerce and does not go beyond what is necessary for that purpose. This statute eliminates entirely the heavy burden on interstate commerce due to industrial strife traceable to the opposition of employer to the recognized right of employees to organize and bargain collectively through representatives of their own choosing. The recognition and protection of that right provide the open door to the reasonable and just settlement of differences with respect to grievances, wages, and other conditions of work, thereby also greatly reducing or mitigating industrial strife over the substantive terms of the employment contract.

The Act now before the Court is an exercise of the "adequate authority" of Congress "to maintain the orderly conduct of interstate commerce and to provide for the peaceful settlement of disputes which threaten it." Here Congress has not, as in the case of the Bituminous Coal Act, used "this protective authority as a pretext for the exertion of power to regulate activities and relations within the States which affect interstate commerce

only indirectly" and it does not go "beyond any proper measure of protection of interstate commerce and attempts a broad regulation of industry within the State." Separate opinion of Mr. Chief Justice Hughes in *Carter* v. *Carter Coal Company*, 298 U. S. at pp. 317–319.

CONCLUSION

Wherefore, the judgment of the court below should be reversed, and the cause remanded with instructions to grant the petition of the Board for the enforcement of its order.

Respectfully submitted.

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JANUARY 1937

APPENDIX

Number of labor disputes, employees involved, and man-days of idleness resulting, 1916–1936

Year	Number of disputes	Number of disputes in which number of employees is reported	Number of employees involved in reported disputes	Number of man-days of idleness resulting
1916	3,755	(1)	(1)	(1)
1917	4,438	(1)	(1)	(1)
1918	3,344	(1)	(1)	(1)
1919	3,568	2,665	4,160,348	(1)
1920	3,290	2,226	1,463,054	(1)
1921	2,380	1,785	1,099,247	(1)
1922	1,088	899	1,612,562	(1)
1923	1,553	1,199	756,564	(1)
1924	1,240	808	654,641	(1)
1925	1,298	1,012	428,416	(1)
1926	1,035	783	329,592	(1)
1927	734	734	349,434	37,799,394
1928	629	629	357,145	31,556,947
1929	903	903	330,463	9,975,213
1930	653	653	183,114	2,730,386
1931	894	894	279,389	6,398,183
1932	808	808	342,826	6,462,943
1933	1,695	1,695	812,137	14,818,846
1934	1,856	1,856	1,466,695	19,591,949
1935	2,014	2,014	1,117,213	15,456,337
1936[2]	962	962	362,154	5,687,054

(1) Accurate or comparable data not available.

[2] First 6 months.

Compiled from statistics published by the U. S. Bureau of Labor Statistics in the *Monthly Labor Review* (July 1934), p. 76; (May 1935) p. 1267; (May 1936) pp. 1282, 1300; (June 1936) p. 1569; (July 1936) p. 93; (August 1936) p. 386; (September 1936) p. 633; (October 1936) p. 905. Statistics for 1934–1936 are not strictly comparable to those of previous years. Beginning in November 1934, the Bureau of Labor Statistics introduced more accurate and complete methods in compiling the foregoing labor disputes data. *Monthly Labor Review* (January 1936), p. 1. For other figures and sources, see Senate Report No. 573, pp. 1–2; House Report No. 1147, p. 8, 74th Cong., 1st Sess.

U. S. GOVERNMENT PRINTING OFFICE : 1937